

CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 34

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This issue contains:

U.S. Customs Service

T.D. 00-57

T.D. 00-76 and 00-79

General Notice

**DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE**

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

**Please visit the U.S. Customs Web at:
<http://www.customs.gov>**

Department of the Treasury

Customs Service

CUSTOMS TRADE SYMPOSIUM 2000

AGENCY: Customs Service, Treasury.

ACTION: Notice of symposium.

SUMMARY: This document announces that the Customs Service will convene a major trade symposium to discuss the agency's programs, strategic plans, and its vision for trade in the 21st century. Members of the international trade and transportation community are invited, and, if interested, are requested to register early.

DATE: The symposium will be held on Thursday, November 30, 2000, from 8:00 a.m. to 6:00 p.m. All registrations must be made on-line and confirmed by November 24, 2000.

ADDRESS: The meeting will be held in Washington, D.C. at the Ronald Reagan Building and International Trade Center, Amphitheater Auditorium, at 1300 Pennsylvania Avenue, N.W.

FOR FURTHER INFORMATION CONTACT: ACS Client Representatives; Customs Account Managers; or the Office of the Trade Ombudsman at (202) 927-1440 (trade.ombudsman@customs.treas.gov). To obtain the latest information on program changes or to register on-line, visit the Customs website at <http://www.customs.gov/trade2000>.

SUPPLEMENTARY INFORMATION:

Customs will be convening a major trade symposium (Customs Trade Symposium 2000) on Thursday, November 30, 2000, from 8:00 a.m. to 6:00 p.m. at the Ronald Reagan Building and International Trade Center Amphitheater Auditorium, 1300 Pennsylvania Avenue, N.W., Washington, D.C. The symposium will highlight Customs present programs and strategic plans, and its vision of international trade in the 21st century. The symposium will feature Commissioner Raymond W. Kelly as the keynote speaker, presentations by senior Customs officials, and a luncheon address by nationally-known political analyst Mark Shields. A reception will follow the program at which senior Customs officials will be available to answer questions.

Symposium program topics include:

CUSTOMS STRATEGIC VISION - Preparation for a new era of global trade and the challenges that must be addressed;

THE AUTOMATED COMMERCIAL ENVIRONMENT (ACE) - Timetable for implementation;

TRADE COMPLIANCE - New policies to drive compliance improvements and to deliver benefits to low-risk importers;

THE ENTRY REVISION PROJECT (ERP) - The future of Customs entry processing;

THE RECONCILIATION PROTOTYPE (RECON II) - Streamlining the process and providing a path to periodic filing of post entry amendments;

POST ENTRY AMENDMENTS - Implementation of new policies designed to simplify the Supplemental Information Letter and improve compliance; and

DRAWBACK - Proposals for major legislative changes to modernize the drawback process.

Members of the international trade and transportation community are invited to attend the Symposium. The cost is \$ 150 per individual. This includes the cost of the symposium, continental breakfast, luncheon, and a post-symposium reception. Interested parties are requested to register early. All registrations must be made on-line at the Customs website (<http://www.customs.gov/trade2000>). Registration, which will be accepted on a space available basis, must be confirmed by November 24, 2000.

Dated: October 25, 2000

JOSEPH M. REES
*Trade Ombudsman,
U.S. Customs Service.*

[Published in the **Federal Register**, October 31, 2000 (65 FR 65040)]

U.S. Customs Service

Treasury Decisions

19 CFR 10, 12, 18, 24, 111, 113, 114,
125, 134, 145, 162, 171, and 172

(T.D. 00-57)

RIN 1515-AC01

PETITIONS FOR RELIEF: SEIZURES, PENALTIES, AND LIQUIDATED DAMAGES; CORRECTION

AGENCY: Customs Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: Customs published in the **Federal Register** of September 5, 2000, a document that revised the Customs Regulations relating to the filing of petitions in penalty, liquidated damages, and seizure cases. Inadvertently, Appendix C to Part 171 was incorrectly amended. This document corrects the amendment of that Appendix.

EFFECTIVE DATE: November 2, 2000.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, (202) 927-2344.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On September 5, 2000, Customs published in the **Federal Register** (65 FR 53565) T.D. 00-57 that revised the Customs Regulations relating to the filing of petitions in penalty, liquidated damages, and seizure cases. Parts 171 and 172 of the Customs Regulations were recrafted in that document to include petition processing in seizure and unsecured penalty cases under part 171 and liquidated damages and secured penalty petition processing under part 172. It has come to Customs attention that the amendatory instructions regarding Appendix C to part 171 set forth in that document inadvertently failed to remove a section and a note in the Appendix which were intended to

be removed. Not removing the section resulted in the next section being redesignated incorrectly. Section I.H. and the note following Section I.H. were intended to be removed, but were not, and section I.H. was incorrectly designated as section I.F. This document corrects these errors by removing section I.H. and the note following section I.H., and redesignating section I.I. as section I.F.

Correction of Publication

Accordingly, the publication on September 5, 2000, of the final rule (T.D. 00-57, 65 FR 53565) is corrected as follows:

1. On page 53578, in the third column, the fifth amending instruction is revised to read as follows:

5. Appendix C to Part 171 is amended by removing the NOTE following section I.D., removing section I.E., redesignating section I.F. as section I.E., removing sections I.G. and I.H. and the NOTE following section I.H., and redesignating section I.I. as section I.F.

Date: October 30, 2000

STUART P. SEIDEL
*Assistant Commissioner,
Office of Regulations and Rulings.*

[Published in the **Federal Register**, November 2, 2000 (65 FR 65769)]

Department of the Treasury

United States Custom Service

(T.D. 00-76)

REVOCATION OF CUSTOMS BROKER LICENSES

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: Customs Broker License Revocations

I, as Assistant Commissioner, Office Field Operations, pursuant to section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111), hereby revoke by operation of law the following Customs broker licenses without prejudice based on the authority as annotated:

<u>NAME</u>	<u>PORT</u>	<u>LICENSE NO.</u>	<u>AUTHORITY</u>
Scott J. Goldberg	New York	10686	19 CFR 111.30 (d)(4)
Kenneth T. Brook	New York	11266	19 CFR 111.30 (d)(4)
Ronald Lee	New York	07337	19 CFR 111.30 (d)(4)
SAIMA Avandero USA, Inc.	New York	10718	19 CFR 111.45(a)

BONNI G. TISCHLER
*Assistant Commissioner,
Office of Field Operations.*

Date: October 25, 2000

[Published in the **Federal Register**, October 31, 2000 (65 FR 65039)]

Department of the Treasury

United States Custom Service

(T.D. 00-77)

CANCELLATION OF CUSTOMS BROKER LICENSES

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: Customs Broker License Cancellations

I, as Assistant Commissioner, Office Field Operations, pursuant to Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), and the Customs Regulations (19 CFR 111), hereby cancel the following Customs broker's licenses without prejudice based on the authority as annotated:

NAME	PORT	LICENSE NO.	AUTHORITY
United Motor Freight, Inc.	Seattle	1436219	CFR 111.51(a)
ClearFreight Corporation	San Francisco	0617419	CFR 111.51(a)

BONNI G. TISCHLER
*Assistant Commissioner,
Office of Field Operations.*

Date: October 25, 2000

[Published in the **Federal Register**, October 31, 2000 (65 FR 65040)]

(T.D. 00-78)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR
OCTOBER, 2000

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and other concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CRF 159, Subpart C).

Holiday(s): October 9, 2000.

Austria schilling:

October 1, 2000	\$0.064221
October 2, 2000 .....	.063996
October 3, 2000 .....	.063523
October 4, 2000 .....	.063414
October 5, 2000 .....	.063116
October 6, 2000 .....	.063080
October 7, 2000 .....	.063080
October 8, 2000 .....	.063080
October 9, 2000 .....	.063080
October 10, 2000 .....	.063095
October 11, 2000 .....	.063334
October 12, 2000 .....	.062818
October 13, 2000 .....	.062266
October 14, 2000 .....	.062266
October 15, 2000 .....	.062266
October 16, 2000 .....	.061692
October 17, 2000 .....	.061823
October 18, 2000 .....	.060980
October 19, 2000 .....	.061089
October 20, 2000 .....	.061045
October 21, 2000 .....	.061045
October 22, 2000 .....	.061045
October 23, 2000 .....	.060784
October 24, 2000 .....	.060784
October 25, 2000 .....	.060100
October 26, 2000 .....	.060108
October 27, 2000 .....	.061089
October 28, 2000 .....	.061089
October 29, 2000 .....	.061089
October 30, 2000 .....	.061278
October 31, 2000 .....	.061670

Belgium franc:

October 1, 2000	\$0.021906
October 2, 2000 .....	.021830
October 3, 2000 .....	.021668
October 4, 2000 .....	.021631

October 5, 2000 .....	.021530
October 6, 2000 .....	.021517
October 7, 2000 .....	.021517
October 8, 2000 .....	.021517
October 9, 2000 .....	.021517
October 10, 2000 .....	.021522
October 11, 2000 .....	.021604
October 12, 2000 .....	.021428
October 13, 2000 .....	.021240
October 14, 2000 .....	.021240
October 15, 2000 .....	.021240
October 16, 2000 .....	.021044
October 17, 2000 .....	.021088
October 18, 2000 .....	.020801
October 19, 2000 .....	.020838
October 20, 2000 .....	.020823
October 21, 2000 .....	.020823
October 22, 2000 .....	.020823
October 23, 2000 .....	.020734
October 24, 2000 .....	.020734
October 25, 2000 .....	.020501
October 26, 2000 .....	.020503
October 27, 2000 .....	.020838
October 28, 2000 .....	.020838
October 29, 2000 .....	.020838
October 30, 2000 .....	.020902
October 31, 2000 .....	.021036

Finland markka:

October 1, 2000	\$0.148628
October 2, 2000 .....	.148106
October 3, 2000 .....	.147013
October 4, 2000 .....	.146761
October 5, 2000 .....	.146071
October 6, 2000 .....	.145987
October 7, 2000 .....	.145987
October 8, 2000 .....	.145987
October 9, 2000 .....	.145987
October 10, 2000 .....	.146021
October 11, 2000 .....	.146576
October 12, 2000 .....	.145382
October 13, 2000 .....	.144103
October 14, 2000 .....	.144103
October 15, 2000 .....	.144103
October 16, 2000 .....	.142775
October 17, 2000 .....	.143077
October 18, 2000 .....	.141126
October 19, 2000 .....	.141379
October 20, 2000 .....	.141278
October 21, 2000 .....	.141278
October 22, 2000 .....	.141278
October 23, 2000 .....	.140672
October 24, 2000 .....	.140672
October 25, 2000 .....	.139091
October 26, 2000 .....	.139108

October 27, 2000 .....	.141379
October 28, 2000 .....	.141379
October 29, 2000 .....	.141379
October 30, 2000 .....	.141816
October 31, 2000 .....	.142724

France franc:

October 1, 2000	\$0.134719
October 2, 2000 .....	.134247
October 3, 2000 .....	.133256
October 4, 2000 .....	.133027
October 5, 2000 .....	.132402
October 6, 2000 .....	.132326
October 7, 2000 .....	.132326
October 8, 2000 .....	.132326
October 9, 2000 .....	.132326
October 10, 2000 .....	.132356
October 11, 2000 .....	.132859
October 12, 2000 .....	.131777
October 13, 2000 .....	.130618
October 14, 2000 .....	.130618
October 15, 2000 .....	.130618
October 16, 2000 .....	.129414
October 17, 2000 .....	.129688
October 18, 2000 .....	.127920
October 19, 2000 .....	.128149
October 20, 2000 .....	.128057
October 21, 2000 .....	.128057
October 22, 2000 .....	.128057
October 23, 2000 .....	.127508
October 24, 2000 .....	.127508
October 25, 2000 .....	.126075
October 26, 2000 .....	.126091
October 27, 2000 .....	.128149
October 28, 2000 .....	.128149
October 29, 2000 .....	.128149
October 30, 2000 .....	.128545
October 31, 2000 .....	.129368

Germany deutsche mark:

October 1, 2000	\$0.451829
October 2, 2000 .....	.450244
October 3, 2000 .....	.446920
October 4, 2000 .....	.446153
October 5, 2000 .....	.444057
October 6, 2000 .....	.443801
October 7, 2000 .....	.443801
October 8, 2000 .....	.443801
October 9, 2000 .....	.443801
October 10, 2000 .....	.443904
October 11, 2000 .....	.445591
October 12, 2000 .....	.441961

October 13, 2000	438075
October 14, 2000	438075
October 15, 2000	438075
October 16, 2000	434036
October 17, 2000	434956
October 18, 2000	429025
October 19, 2000	429792
October 20, 2000	429485
October 21, 2000	429485
October 22, 2000	429485
October 23, 2000	427645
October 24, 2000	427645
October 25, 2000	422838
October 26, 2000	422890
October 27, 2000	429792
October 28, 2000	429792
October 29, 2000	429792
October 30, 2000	431121
October 31, 2000	433882

Greece drachma:

October 1, 2000	\$0.002602
October 2, 2000 .....	.002592
October 3, 2000 .....	.002575
October 4, 2000 .....	.002572
October 5, 2000 .....	.002559
October 6, 2000 .....	.002557
October 7, 2000 .....	.002557
October 8, 2000 .....	.002557
October 9, 2000 .....	.002557
October 10, 2000 .....	.002559
October 11, 2000 .....	.002569
October 12, 2000 .....	.002544
October 13, 2000 .....	.002524
October 14, 2000 .....	.002524
October 15, 2000 .....	.002524
October 16, 2000 .....	.002502
October 17, 2000 .....	.002506
October 18, 2000 .....	.002474
October 19, 2000 .....	.002479
October 20, 2000 .....	.002475
October 21, 2000 .....	.002475
October 22, 2000 .....	.002475
October 23, 2000 .....	.002464
October 24, 2000 .....	.002462
October 25, 2000 .....	.002438
October 26, 2000 .....	.002437
October 27, 2000 .....	.002477
October 28, 2000 .....	.002477
October 29, 2000 .....	.002477
October 30, 2000 .....	.002483
October 31, 2000 .....	.002498

Ireland pound:

October 1, 2000	\$1.122068
October 2, 2000	1.118131
October 3, 2000	1.109878
October 4, 2000	1.107973
October 5, 2000	1.102768
October 6, 2000	1.102133
October 7, 2000	1.102133
October 8, 2000	1.102133
October 9, 2000	1.102133
October 10, 2000	1.102387
October 11, 2000	1.106577
October 12, 2000	1.097562
October 13, 2000	1.087912
October 14, 2000	1.087912
October 15, 2000	1.087912
October 16, 2000	1.077881
October 17, 2000	1.080166
October 18, 2000	1.065437
October 19, 2000	1.067342
October 20, 2000	1.066580
October 21, 2000	1.066580
October 22, 2000	1.066580
October 23, 2000	1.062009
October 24, 2000	1.062009
October 25, 2000	1.050073
October 26, 2000	1.050200
October 27, 2000	1.067342
October 28, 2000	1.067342
October 29, 2000	1.067342
October 30, 2000	1.070643
October 31, 2000	1.077500

Italy lira:

October 1, 2000	\$0.000456
October 2, 2000 .....	.000455
October 3, 2000 .....	.000451
October 4, 2000 .....	.000451
October 5, 2000 .....	.000449
October 6, 2000 .....	.000448
October 7, 2000 .....	.000448
October 8, 2000 .....	.000448
October 9, 2000 .....	.000448
October 10, 2000 .....	.000448
October 11, 2000 .....	.000450
October 12, 2000 .....	.000446
October 13, 2000 .....	.000443
October 14, 2000 .....	.000443
October 15, 2000 .....	.000443
October 16, 2000 .....	.000438
October 17, 2000 .....	.000439
October 18, 2000 .....	.000433
October 19, 2000 .....	.000434

October 20, 2000 .....	.000434
October 21, 2000 .....	.000434
October 22, 2000 .....	.000434
October 23, 2000 .....	.000432
October 24, 2000 .....	.000432
October 25, 2000 .....	.000427
October 26, 2000 .....	.000427
October 27, 2000 .....	.000434
October 28, 2000 .....	.000434
October 29, 2000 .....	.000434
October 30, 2000 .....	.000435
October 31, 2000 .....	.000438

Luxembourg franc:

October 1, 2000	\$0.021906
October 2, 2000 .....	.021830
October 3, 2000 .....	.021668
October 4, 2000 .....	.021631
October 5, 2000 .....	.021530
October 6, 2000 .....	.021517
October 7, 2000 .....	.021517
October 8, 2000 .....	.021517
October 9, 2000 .....	.021517
October 10, 2000 .....	.021522
October 11, 2000 .....	.021604
October 12, 2000 .....	.021428
October 13, 2000 .....	.021240
October 14, 2000 .....	.021240
October 15, 2000 .....	.021240
October 16, 2000 .....	.021044
October 17, 2000 .....	.021088
October 18, 2000 .....	.020801
October 19, 2000 .....	.020838
October 20, 2000 .....	.020823
October 21, 2000 .....	.020823
October 22, 2000 .....	.020823
October 23, 2000 .....	.020734
October 24, 2000 .....	.020734
October 25, 2000 .....	.020501
October 26, 2000 .....	.020503
October 27, 2000 .....	.020838
October 28, 2000 .....	.020838
October 29, 2000 .....	.020838
October 30, 2000 .....	.020902
October 31, 2000 .....	.021036

Netherlands guilder:

October 1, 2000	\$0.401006
October 2, 2000 .....	.399599
October 3, 2000 .....	.396649
October 4, 2000 .....	.395969
October 5, 2000 .....	.394108
October 6, 2000 .....	.393881
October 7, 2000 .....	.393881

October 8, 2000 .....	.393881
October 9, 2000 .....	.393881
October 10, 2000 .....	.393972
October 11, 2000 .....	.395469
October 12, 2000 .....	.392248
October 13, 2000 .....	.388799
October 14, 2000 .....	.388799
October 15, 2000 .....	.388799
October 16, 2000 .....	.385214
October 17, 2000 .....	.386031
October 18, 2000 .....	.380767
October 19, 2000 .....	.381448
October 20, 2000 .....	.381175
October 21, 2000 .....	.381175
October 22, 2000 .....	.381175
October 23, 2000 .....	.379542
October 24, 2000 .....	.379542
October 25, 2000 .....	.375276
October 26, 2000 .....	.375322
October 27, 2000 .....	.381448
October 28, 2000 .....	.381448
October 29, 2000 .....	.381448
October 30, 2000 .....	.382627
October 31, 2000 .....	.385078

Portugal escudo:

October 1, 2000	\$0.004408
October 2, 2000 .....	.004392
October 3, 2000 .....	.004360
October 4, 2000 .....	.004353
October 5, 2000 .....	.004332
October 6, 2000 .....	.004330
October 7, 2000 .....	.004330
October 8, 2000 .....	.004330
October 9, 2000 .....	.004330
October 10, 2000 .....	.004331
October 11, 2000 .....	.004347
October 12, 2000 .....	.004312
October 13, 2000 .....	.004274
October 14, 2000 .....	.004274
October 15, 2000 .....	.004274
October 16, 2000 .....	.004234
October 17, 2000 .....	.004243
October 18, 2000 .....	.004185
October 19, 2000 .....	.004193
October 20, 2000 .....	.004190
October 21, 2000 .....	.004190
October 22, 2000 .....	.004190
October 23, 2000 .....	.004172
October 24, 2000 .....	.004172
October 25, 2000 .....	.004125
October 26, 2000 .....	.004126
October 27, 2000 .....	.004193
October 28, 2000 .....	.004193

October 29, 2000 .....	.004193
October 30, 2000 .....	.004206
October 31, 2000 .....	.004233

South Korea won:

October 1, 2000	\$0.000897
October 2, 2000 .....	.000894
October 3, 2000 .....	.000893
October 4, 2000 .....	.000893
October 5, 2000 .....	.000893
October 6, 2000 .....	.000894
October 7, 2000 .....	.000894
October 8, 2000 .....	.000894
October 9, 2000 .....	.000894
October 10, 2000 .....	.000891
October 11, 2000 .....	.000890
October 12, 2000 .....	.000890
October 13, 2000 .....	.000883
October 14, 2000 .....	.000883
October 15, 2000 .....	.000883
October 16, 2000 .....	.000885
October 17, 2000 .....	.000880
October 18, 2000 .....	.000877
October 19, 2000 .....	.000877
October 20, 2000 .....	.000883
October 21, 2000 .....	.000883
October 22, 2000 .....	.000883
October 23, 2000 .....	.000876
October 24, 2000 .....	.000879
October 25, 2000 .....	.000877
October 26, 2000 .....	.000877
October 27, 2000 .....	.000879
October 28, 2000 .....	.000879
October 29, 2000 .....	.000879
October 30, 2000 .....	.000877
October 31, 2000 .....	.000878

Spain peseta:

October 1, 2000	\$0.005311
October 2, 2000 .....	.005293
October 3, 2000 .....	.005253
October 4, 2000 .....	.005244
October 5, 2000 .....	.005220
October 6, 2000 .....	.005217
October 7, 2000 .....	.005217
October 8, 2000 .....	.005217
October 9, 2000 .....	.005217
October 10, 2000 .....	.005218
October 11, 2000 .....	.005238
October 12, 2000 .....	.005195
October 13, 2000 .....	.005149
October 14, 2000 .....	.005149
October 15, 2000 .....	.005149
October 16, 2000 .....	.005102

October 17, 2000 .....	.005113
October 18, 2000 .....	.005043
October 19, 2000 .....	.005052
October 20, 2000 .....	.005049
October 21, 2000 .....	.005049
October 22, 2000 .....	.005049
October 23, 2000 .....	.005027
October 24, 2000 .....	.005027
October 25, 2000 .....	.004970
October 26, 2000 .....	.004971
October 27, 2000 .....	.005052
October 28, 2000 .....	.005052
October 29, 2000 .....	.005052
October 30, 2000 .....	.005068
October 31, 2000 .....	.005100

Taiwan N.T. dollar:

October 1, 2000	\$0.031924
October 2, 2000 .....	.031959
October 3, 2000 .....	.031928
October 4, 2000 .....	.031949
October 5, 2000 .....	.031949
October 6, 2000 .....	.031939
October 7, 2000 .....	.031939
October 8, 2000 .....	.031939
October 9, 2000 .....	.031939
October 10, 2000 .....	.031939
October 11, 2000 .....	.031918
October 12, 2000 .....	.031949
October 13, 2000 .....	.031646
October 14, 2000 .....	.031646
October 15, 2000 .....	.031646
October 16, 2000 .....	.031201
October 17, 2000 .....	.030960
October 18, 2000 .....	.030769
October 19, 2000 .....	.030912
October 20, 2000 .....	.031104
October 21, 2000 .....	.031104
October 22, 2000 .....	.031104
October 23, 2000 .....	.031153
October 24, 2000 .....	.031201
October 25, 2000 .....	.031201
October 26, 2000 .....	.031066
October 27, 2000 .....	.030998
October 28, 2000 .....	.030998
October 29, 2000 .....	.030998
October 30, 2000 .....	.030912
October 31, 2000 .....	.030912

RICHARD B. LAMAN
Chief,
Customs Information Exchange.

(T.D. 00-79)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATE FOR OCTOBER, 2000

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision *** for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Holiday(s): October 9, 2000.

Brazil real:

October 26, 2000	\$0.513875
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Denmark krone:

October 23, 2000	\$0.112341
October 24, 2000112366
October 25, 2000111049
October 26, 2000 .....	.111173

Norway krone:

October 25, 2000	\$0.104330
October 26, 2000 .....	.104286

South Africa rand:

October 16, 2000	\$0.131970
October 17, 2000 .....	.132188
October 18, 2000 .....	.129660
October 19, 2000 .....	.130378
October 20, 2000 .....	.131839
October 21, 2000 .....	.131839
October 22, 2000 .....	.131839
October 23, 2000 .....	.131926
October 24, 2000 .....	.131570
October 25, 2000 .....	.131234
October 26, 2000 .....	.130124
October 27, 2000 .....	.131475
October 28, 2000 .....	.131475
October 29, 2000 .....	.131475
October 30, 2000 .....	.132293
October 31, 2000 .....	.132275

Sweden krona:

October 25, 2000	\$0.097609
October 26, 2000097087

Switzerland franc:

October 26, 2000	\$0.547945
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RICHARD B. LAMAN
Chief,
Customs Information Exchange.

U.S. Customs Service

November 1, 2000

Department of the Treasury
Office of the Commissioner of Customs
Washington, D.C.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs field offices to merit publication in the Customs Bulletin.

STUART P. SEIDEL
*Assistant Commissioner,
Office of Regulations and Rulings.*

U.S. Customs Service

General Notice

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN LIQUID CRYSTAL DISPLAY (LCD) PROJECTORS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to tariff classification of certain liquid crystal display projectors.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of certain liquid crystal display ("LCD") projectors under the Harmonized Tariff Schedule of the United States ("HTSUS"). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before December 15, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 927-2388.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title

VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of certain projectors. Although in this notice Customs is specifically referring to one ruling, NY C83603, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY C83603 dated January 26, 1998, set forth as Attachment A to this document, Customs classified LCD projectors designed to convert computer or video sources to a digital format in subheading 8471.60.30, HTSUS, as "Input or output units: Other: Display units: Without cathode-ray tube (CRT), having a visual display diagonal not exceeding 30.5 cm."

It is now Customs position that the projectors in this ruling are properly classifiable under subheading 8528.30.66, HTSUS, as "Video projectors: Color: With a flat panel screen: Other: With a video display diagonal not exceeding 34.29 cm." Customs position is based upon its determinations that: pursuant to Legal Note 3 to Section XVI, HTSUS, the projectors are composite machines of which there is no satisfactory evidence as to their principal function; and pursuant to GRI 3(b), the projectors are composite goods of which there is no satisfactory evidence as to their essential character. Accordingly, under GRI 3(c) the projectors are to be classified under the heading which occurs last in numerical order among those which equally merit consideration, i.e., subheading 8528.30.66, HTSUS. Customs position is consistent with a recent decision on similar merchandise published in the World Customs Organization (WCO) *Compendium of Classification Opinions* on the Harmonized Commodity Description and Coding System where the classification of a projector which received signals from automatic data processing machines and video sources and whose principal function could not be determined was based upon GRI 3(c). See Opinion No. 8528.30/1 of the WCO *Compendium of Classification Opinions*, Amending Supplement No. 24 (August 1999).

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY C83603 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 964605, set forth as Attachment B. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: October 27, 2000

MARVIN AMERNICK
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

January 26, 1998
CLA-2-84:RR:NC:1:110 C83603
Category: Classification
Tariff No.: 8471.60.3000

MR. DAMON V. PIKE
DELOITTE & TOUCHE LLP
100 Peachtree Street, Suite 1700
Atlanta, Georgia 30303-1921

Re: The tariff classification of LCD projection display units from Great Britain.

DEAR MR. PIKE:

In your letter dated January 21, 1998, on behalf of Digital Projection, Inc., you requested a tariff classification ruling.

The merchandise under consideration involves LCD digital display projectors which are known as the 2v (2500 lumens), the 4dv (3500 lumens), and the 5dv (5000) lumens LCD digital display projectors. These digital projectors are designed to convert computer or video sources to a digital format with a luminance uniformity and ANSI brightness in excess of 2500 ANSI lumens.

When the source format is input via a cable connection to these LCD digital display projectors, the image content is analyzed through high rate digital sampling using a resizing engine. The engine reproduces the image content using the maximum resolution for each of the three "Digital Micromirror Devices" (DMDs); one for each of the three primary colors of red, green, and blue. Each DMD has a visual display diagonal of approximately three-quarters to one and one quarter of an inch. Next, a high powered miniature light source is focused on the three DMDs via beam forming and light splitting optics. After each DMD modulates and reflects these light sources, the three images are optically recombined and projected through a single lens to produce a stable and definitely converged full color image on the screen.

The models 2v, 4dv, and the 5dv LCD digital display projectors utilize varying ANSI lumens output, and feature varying digital resolution capability. The 2v (2500 lumens) and 4dv (3500) lumens models have a maximum display resolution capability of 848 by 600 pixels. The 5dv (5000 lumens) can display up to 1024 by 768 pixels. Three configurable inputs accept all major source formats from composite video through XGA.

The 2v, 4dv, and the 5dv LCD digital display projectors appear to incorporate the special design characteristics which are common to the display units used with automatic data processing (ADP) machines. They are principally used in an ADP system; they are directly or indirectly connectable to a central processing unit; and they have the capacity to accept or deliver data in a form, (codes or signals) which can be used by the system. The 2v, 4dv, and 5dv LCD digital display projectors are also comparable to the LCD video display projectors noted in HQ 956283, NY B84273, and NY Ruling Letter A81603.

The applicable subheading for the 2v, 4dv, and the 5dv LCD digital display projectors will be 8471.60.3000, Harmonized Tariff Schedule of the United States (HTS), which provides for display units, without cathode ray tube (CRT), having a visual display diagonal not exceeding 30.5 cm. The rate of duty will be free.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Art Brodbeck at 212-466-5490.

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

CLA-2 RR:CR:GC 964605 GOB

Category: Classification

Tariff No.: 8528.30.66

MR. DAMON V. PIKE
DELOITTE & TOUCHE LLP
100 Peachtree Street, Suite 1700
Atlanta, GA 30303-1921

Re: LCD projectors; NY C83603 revoked.

DEAR MR. PIKE:

This is with respect to New York Ruling Letter ("NY") C83603, issued to you on behalf of Digital Projection, Inc. by the Customs National Commodity Specialist Division, New York, on January 26, 1998. In that ruling, certain liquid crystal display ("LCD") projectors were classified under subheading 8471.60.30, Harmonized Tariff Schedule of the United States ("HTSUS"). We have reviewed that classification and have determined that it is incorrect. This ruling sets forth the correct classification.

Facts:

The LCD projectors were described as follows in NY C83603:

The merchandise under consideration involves LCD digital display projectors which are known as the 2v (2500 lumens), the 4dv (3500 lumens), and the 5dv (5000 lumens) LCD digital display projectors. These digital projectors are designed to convert computer or video sources to a digital format with a luminance uniformity and ANSI brightness in excess of 2500 ANSI lumens.

When the source format is input via a cable connection to these LCD digital display projectors, the image content is analyzed through high rate digital sampling using a resizing engine. The engine reproduces the image content using the maximum resolution for each of the three "Digital Micromirror Devices" (DMDs); one for each of the three primary colors of red, green, and blue. Each DMD has a visual display diagonal of approximately three-quarters to one and one quarter of an inch. Next, a high powered miniature light source is focused on the three DMDs via beam forming and light splitting optics. After each DMD modulates and reflects these light sources, the three images are optically recombined and projected through a single lens to produce a stable and definitely converged full color image on the screen.

The models 2v, 4dv and 5 dv digital projectors utilize varying ANSI lumens output, and feature varying digital resolution capability. The 2v (2500 lumens) and 4dv (3500 lumens) models have a maximum display resolution capability of 848 by 600 pixels. The 5dv (5000) lumens can display up to 1024 by 768-pixels. Three configurable inputs accept all major source formats from composite video through XGA.

Marketing information provided with respect to the projectors provides as follows:

Perfectly suited for entertainment, business, education, simulation, religion, command and control or staging and rental environments...

Technical specifications for the projectors include:

Input Specification: 3 independently configurable inputs – selectable via remote control. BNC connectors. 525/60, 625/50, PAL, NTSC, SECAM, VGA, SVGA, XGA & MAC Auto Select.

Issue:

Are the above-described LCD projectors provided for in heading 8471, HTSUS, as automatic data processing units, or in heading 8528, HTSUS, as video projectors?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

The HTSUS provisions under consideration are as follows:

Heading 8471:

Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included[.]

Heading 8528:

Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors[.]

Legal Note 3 to Section XVI, HTSUS, provides:

Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

The EN to Legal Note 3 to Section XVI, HTSUS (EN (VI)), provides in pertinent part:

Where it is not possible to determine the principal function, and where, as provided in Note 3 to the Section, the context does not otherwise require, it is necessary to apply General Interpretive Rule 3 (c)...

Customs has reconsidered the uses of projectors and the evidentiary requirements of Legal Note 3 to Section XVI. The courts have provided factors, which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so

using the merchandise, and recognition in the trade of such use. See *U.S. v. Carborundum Co.*, 63 CCPA 98, 102, 536 F.2d 373, 377 (1976), *cert denied*, 429 U.S. 979 (1976); *Lenox Collections v. U.S.*, 19 CIT 345, 347 (1995); *Kraft, Inc. v. U.S.*, 16 CIT 483, 489 (1992); and *G. Heileman Brewing Co. v. U.S.*, 14 CIT 614, 620 (1990).

Legal Note 3 to Section XVI does not resolve the classification at issue because the projectors are composite machines and satisfactory documentary evidence has not been submitted with respect to the principal function of the projectors. As a result, we are now of the view that the projectors cannot be classified based upon GRI 1. GRI 2 is not applicable here. GRI 3 provides as follows:

When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
- (c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

EN (VIII) for GRI 3(b) provides:

The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

At GRI 3(a), neither of the two competing headings provides a more specific description than the other. Pursuant to GRI 3(b), the projectors are composite goods. There is no essential character for the projectors because both the video and automatic data processing functions are equally important. Accordingly, we proceed to GRI 3(c), *i.e.*, the goods shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Pursuant to GRI 3(c), we determine that the projectors are provided for in heading 8528, HTSUS. They are classified in subheading 8528.30.66, HTSUS as: "Video projectors: Color: With a flat panel screen: Other: With a video display diagonal not exceeding 34.29 cm."

Our determination is consistent with a recent decision on similar merchandise published in the World Customs Organization ("WCO") *Compendium of Classification Opinions* on the Harmonized Commodity Description and Coding System where the classification of a projector which received signals from an automatic data processing machine and a video source and whose principal function could not be determined was based upon GRI 3(c). See Opinion No. 8528.30/1 of the WCO *Compendium of Classification Opinions*, Amending Supplement No. 24 (August 1999). As stated in T.D. 89-80, decisions in the *Compendium of Classification Opinions* should be treated in the same manner as the EN's, *i.e.*, while neither legally binding nor

dispositive, the they provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. T.D. 89-80 further states that EN's and decisions in the *Compendium of Classification Opinions* "should receive considerable weight."

This determination is consistent with our determinations in HQ 964043 dated July 25, 2000, and HQ 964159 dated July 25, 2000. In those rulings we classified LCD projectors in heading 8528, HTSUS, based upon GRI 3(c) where there was no satisfactory documentary evidence with respect to the principal function of the projectors. See also HQ 960282 dated October 22, 1998, and HQ 960354 dated October 22, 1998, where we classified monitors in heading 8528 based upon GRI 3(c).

Holding:

The LCD projectors are provided for in heading 8528, HTSUS, and are classified in subheading 8528.30.66, HTSUS, as "Video projectors: Color: With a flat panel screen: Other: With a video display diagonal not exceeding 34.29 cm."

Effect on Other Rulings:

NY C83603 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

**PROPOSED REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF CERTAIN
WESTERN RED CEDAR BOARDS**

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter and treatment relating to the classification of certain Western Red Cedar boards.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, 19 U.S.C. 1625(c), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain Western Red Cedar boards or "short boards". Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before December 15, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Textile Classification Branch, 1300 Pennsylvania Avenue,

N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: J. Steven Jarreau, Textiles Branch: (202) 927-1031.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, 19 U.S.C. §1484, the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, 19 U.S.C. 1625(c)(1), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke one ruling relating to the tariff classification of certain Western Red Cedar boards or "short boards". Although in this notice Customs is specifically referring to one Headquarters Rulings Letter (HQ), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, which classified the merchandise contrary to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, 19 U.S.C. 1625(c)(2), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importation of the same or

similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved with substantially identical merchandise should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importers or their agents for importation of merchandise subsequent to the effective date of the final decision on this notice.

In HQ 082694, dated April 11, 1989, certain Western Red Cedar boards, also referred to as "short boards," were classified under subheading 4418.50.0040, HTSUS, which addressed "Builders' joinery and carpentry of wood, including...shingles and shakes." Customs concluded in HQ 082694 that the Western Red Cedar "short boards" measuring eighteen to twenty-four inches long, with random widths and having a thickness between five-eighths of an inch and one and one-fourth inches, possessed the essential character of complete or finished shingles pursuant to General Rule of Interpretation 2 (a). HQ 082694 is set forth as "Attachment A" to this document.

It is now Customs position that the Western Red Cedar boards or "short boards" of the dimensions previously addressed are properly classified in subheading 4407.10.0068 which addresses wood sawn or chipped lengthwise of a thickness not exceeding 6 mm, Western Red Cedar. See also HQ 085187, reconsidered in HQ 964202. The Western Red Cedar boards are material rather than incomplete or unfinished shingles. The boards do not have the essential character of complete or finished shingles. They have not been advanced to a stage in which they are dedicated commercially and practically to the manufacture of complete or finished shingles. Proposed HQ 964446 revoking HQ 082694 is set forth as "Attachment B" to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke HQ 082694 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 964446. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: October 25, 2000

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

April 11, 1989

CLA-2 CO:R:C:G 082694 JLJ 830383

Category: Classification

Tariff No.: 4418.50.0040

MR. KEVIN R. REDL
SECRETARY/TREASURER
ANGLO-AMERICAN CEDAR PRODUCTS LTD.
33286 S. Railway Avenue
Mission, British Columbia V2V 4M6
Canada

Re: Classification of Red Cedar "Short Boards."

DEAR MR. REDL:

You requested a tariff classification ruling for Western red cedar "short boards" imported from Canada. You submitted samples of a "short board," an 18 inch shingle and an 18 inch "Certigroove Shake" along with your request.

Facts:

The product at issue is Western red cedar "short boards." The boards are 5/8 to 1-1/4 inches thick, 18 inches or 24 inches in length, and in random widths. In a conversation with our New York office you stated that the short boards are manufactured on a vertical circular saw, the same equipment used to manufacture shingles. The short boards are made from Western red cedar logs or blocks normally used to make shakes and shingles.

The instant short boards will be used exclusively to make shingles. The short boards are one step away from being complete shingles. In the United States, the boards will be sawn diagonally across the thickness to produce two shingles per board (or, in some cases, four shingles). You stated that some of the shingles are further manufactured into the machine grooved shakes known as "Certigroove Shakes." We note that our best information indicates that, in the normal course of manufacturing shingles, short boards are not produced. The shingles are sawn directly from cedar logs or blocks.

Issue:

Are the instant short boards classified as unfinished shakes or shingles?

Law and Analysis:

The Harmonized Tariff Schedule of the United States Annotated (HTSUSA) replaced the Tariff Schedule of the United States (TSUS) on January 1, 1989. Under General Rule of Interpretation 2(a), HTSUSA, "Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article...." Under predecessors to this rule, it has been held that where a provision contains no qualifying words or phrases to indicate whether or not a completely finished article is to be classified thereunder, it includes an article which has been advanced to the point where its use as the article provided for is made clear, or its utility for any other purpose has been destroyed. *Waltham Watch Co. v. United States*, (Jaeger Watch Co. Inc., Party in Interest), 25 CCPA 330, T.D. 49425 (1938); *Oxford University Press, N.Y., Inc. v. United States*, 20 Cust. Ct. 78, C.D. 1088 (1948); *Norge Division Borg-Warner Corp. v. United States*, 44 Cust. Ct. 121, C.D. 2164 (1960); *F.W. Myers & Co., Inc. v. United States*, 57 CCPA 87, C.A.D. 982 (1970).

A thing may be classified for tariff purposes under an *eo nomine* provision for the article if that thing has been so far processed toward its ultimate completed form as to be dedicated to the making of that article or that class of articles or has been so far advanced beyond the stage of materials as to be dedicated to and

commercially fit only for use as the particular article. *American Import Co. v. United States*, 26 CCPA 72, T.D. 49612 (1938); *Finn Bros., Inc. v. United States*, 59 CCPA 72, C.A.D. 1042 (1972); *John V. Carr & Son, Inc. v. United States*, 72 Cust. Ct. 19, C.D. 4500 (1974); *Avins Industrial Products Co. v. United States*, 62 CCPA 83, C.A.D. 1150 (1975).

In *Doherty-Barrow of Texas, Inc. v. United States*, 3 CIT 228, Slip Op. 82-47 (1982), it was held that steel strip so advanced as to be dedicated for use in making steel cotton bale ties, incapable of other commercial or practical use, and requiring only to be cut to length, was classified as bale ties made from strip rather than as strip of iron or steel, since the individual character and identity of the merchandise had been fixed with certainty. The instant short boards have been so advanced as to be dedicated for use in making shakes or shingles. They are incapable of other commercial use and are used only to make shakes or shingles. They require only diagonal sawing to make shingles. The short boards meet the requirements of unfinished shingles and shakes.

The short boards are classified as incomplete or unfinished articles which have the essential character of the finished shingles. The HTSUSA subheading applicable to the short boards is 4418.50.0040, which provides for shingles and shakes, of red cedar, dutiable at the rate of 20 percent *ad valorem* under HTSUSA subheading 9903.44.10.

Holding:

The short boards are unfinished shingles and shakes. They are classified in subheading 4418.50.0040, HTSUSA.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

CLA-2 RR:CR:TE 964446 jsj
Category: Classification
Tariff No.: 4407.10.0068

MR. KEVIN R. REDL
SECRETARY - TREASURER
ANGLO-AMERICAN CEDAR PRODUCTS LTD.
7160 Beatty Street
Mission, British Columbia
Canada V2V 4M6

Re: Reconsideration of HQ 082694; Western Red Cedar "short boards"; Subheadings 4407.10.0068 and 4418.50.0010; General Rule of Interpretation 2 (a); Unfinished shakes and shingles.

DEAR MR. REDL:

The purpose of this correspondence is to advise you that the United States Customs Service has reconsidered Headquarters Ruling Letter 082694 issued to Anglo-American Cedar Products Ltd. (Anglo-American) on April 11, 1989. The article in issue in HQ 082694 was Western Red Cedar "short boards."

The Customs Service classified Western Red Cedar "short boards" in HQ 082694 in subheading 4418.50.0040¹ of the Harmonized Tariff Schedule of the United

¹ The statistical suffix has changed since 1989. HTSUS subheading 4418.50.0040 as it appeared in 1989 is currently 4418.50.0010.

States (HTSUS). It is the conclusion of the Customs Service, subsequent to a review of HQ 082694, that the classification of Western Red Cedar "short boards" in subheading 4418.50.0040 was incorrect. The correct subheading is 4407.10.0068 HTSUS.

The Customs Service, pursuant to the following analysis, is revoking HQ 082694.

Facts:

The articles in issue, identified as Western Red Cedar "short boards", were describe in HQ 082694 as "boards...5/8 to 1-1/4 inches thick, 18 inches or 24 inches in length, and in random widths."

Issues:

Are the articles in issue, identified as Western Red Cedar "short boards", unfinished shakes or shingles pursuant to General Rule of Interpretation 2 (a) ?

Law and Analysis:

The principal HTSUS subheadings considered by the Customs Service in rendering this reconsideration were: (1) 4407.10.0068; and (2) 4418.50.0010. Subheading 4407.10.0068 provides:

4407 Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6mm:

4407.10.00 Coniferous

4407.10.0068 Other:

Not treated:

Other:

Western red cedar:

Rough².

Subheading 4418.50.0010 provides:

4418 Builders' joinery and carpentry of wood, including cellular wood panels and assembled parquet panels; shingles and shakes:

4418.50.00 Shingles and shakes

4418.50.0010 Shingles:

Of western red cedar.

The classification of imported merchandise pursuant to the Harmonized Tariff Schedule of the United States is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." GRI 1 further provides that merchandise which can not be classified in accordance with the dictates of GRI 1 should be classified pursuant to the other General Rules of Interpretation in their sequential order.

It is the conclusion of the Customs Service that the Western Red Cedar "short boards" in issue are properly classified pursuant to GRI 1. The "short boards" literally satisfy the dictates of heading 4407 because they are "[w]ood sawn or chipped lengthwise ...of a thickness exceeding 6 mm."

Heading 4407 was drafted to be a broad provision for the classification of material. The Explanatory Notes (EN) of the Harmonized Commodity Description and Coding System lend support to this proposition. The Explanatory Notes represent the official interpretation of the HTSUS at the international level. Although the EN's are not law in the United States and the Customs Service is not, therefore, legally obligated to follow them, they are valued as an interpretative aid. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

² The term "rough" is defined in Statistical Note 1 to Chapter 44 HTSUS to include "wood that has been edged, resawn, crosscut or trimmed to smaller sizes." The Note continues that the term "rough" does not include wood that has been dressed or surfaced by planing on one or more edges or faces or has been edge-glued or end-glued."

The breadth of heading 4407 is evidenced from a reading of EN 44.07. The Explanatory Notes to Chapter 44 of the HTSUS provide that heading 4407 encompasses, "with few exceptions...all wood and timber, of any length but of a thickness exceeding 6mm, sawn or chipped along the general direction of the grain or cut by slicing or peeling." The EN further states that "[s]uch wood and timber includes *sawn beams, planks, flitches, boards, laths, etc.*" (Emphasis added.) Explanatory Note 44.07.

General Rule of Interpretation 2 (a) provides that any reference in a HTSUS heading to an article "shall be taken to include a reference to that article incomplete or unfinished." GRI 2 (a) requires, however, that the incomplete or unfinished article have the "essential character" of the complete or finished article.

The General Rules of Interpretation do not define the phrase "essential character", however, its meaning may be understood from an examination of the Explanatory Notes to GRI 2(a). The EN's to GRI 2 (a) draw a distinction between a "blank" which possesses the essential character of an article and a "semi-manufacture[d]" item that does not have the essential character of an article.

A "blank," as defined in the EN, is an article "not ready for direct use, having the approximate shape or outline of the finished article or part." The EN continues stating that a "blank" is an article "which can only be used, other than in exceptional cases, for completion into the finished article or part." A plastic bottle preform is offered in the EN as an example of a blank. Bottle preforms of plastic are "intermediate products having tubular shape, with one closed end and one open end threaded to secure a screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape."

"Semi-manufactures" are items that do not yet have the essential shape or character of the finished articles. Examples of semi-manufactures set forth in the EN's are: "bars, discs, tubes, etc." Semi-manufactures are specifically not regarded as "blanks."

A review of the description of the Western Red Cedar boards or "short boards," in the condition in which they will be imported, reveals semi-manufactured items rather than blanks. The boards do not have the essential character of shakes or shingles. The adjective "short," it should be noted, is an industry term that simply refers to lengths of sawn timber, generally less than six feet long.

A shake, as described by EN 44.18, is "wood split by hand or machine from a bolt or block. Its face reveals the natural texture of the wood resulting from the splitting process. Shakes are sometimes sawn lengthwise through their thickness to obtain two shakes, each then having a split face and a sawn back." The Complete Dictionary of Wood defines "shakes" as "[h]and riven 1/2-in. shingles, longer than normal, and often staggered for special effect." Corkhill, *The Complete Dictionary of Wood*, 501 (1979). Reference to the World Wide Web site of Anglo-American suggests that the principal distinction between a shake and a shingle is that shakes have a "natural split face, and a sawn backside" while shingles are "sawn on both sides and produce a smooth finished look." Anglo-American Cedar Products Ltd., www.angloamerican.com/products.htm, visited Sept. 14, 2000.

A shingle, as defined in the EN's to heading 4418, is "wood sawn lengthwise which is generally thicker than 5mm at one end (the butt) but thinner than 5mm at the other end (the tip). It may have its edges resawn to be parallel; its butt may be resawn to be at right angles to its edges or to form a curve or other shape. One of its faces may be sanded from the butt to the tip or grooved along its length." See also, Corkhill, *The Complete Dictionary of Wood*, 504 (1979).

The boards that were the subject of HQ 082694 issued to Anglo-American in 1989 have not been sufficiently processed beyond the stage of material lumber. They are rectangular lumber boards sawn to size. They are not tapered to any degree, nor are they in a condition in which they may be deemed dedicated to use only as shakes or shingles. They do not have the approximate shape or outline of a shake or shingle and are more closely analogous to the examples of semi-manufactured items in the EN's than to the plastic bottle preform identified as the example of a blank. The "short boards" in issue are plain sawn wood suitable for multiple uses and not recognizable as one particular article of commerce. See

generally, *Ludvig Svensson (US) v. United States*, 62 F. Supp. 2d 1171 (C.I.T.1999); *Doherty-Barrow of Texas, Inc. v. United States*, 3 C.I.T. 228 (1982); and *American Import Co. v. United States*, 26 C.C.P.A. 72 (1938).

The Customs Service is apprised of HQ Ruling Letter 083795 issued on May 26, 1989. HQ 083795 classified Red Cedar "short boards" in HTSUS subheading 4418.50.0040 as unfinished shakes and shingles. It is specifically noted that the articles in issue in that ruling letter, in the condition as imported, possessed the approximate shape or outline of a shingle. The sample was a tapered board measuring eighteen and one-fourth inches in length and ten and eleven-sixteenth inches in width. The tip of the board measured nine-thirty-seconds of an inch (7 mm) and the bottom or butt measured seven-eighths of an inch (22mm). HQ 083795 is, therefore, distinguishable from HQ 082694.

Holding:

Headquarters Ruling Letter 082694 has been reconsidered and it is the conclusion of the Customs Service that the merchandise was incorrectly classified. The correct classification of the Western Red Cedar boards or "short boards" in issue is 4407.10.0068 HTSUS.

The general column one duty rate is Free.

Headquarters Ruling Letter 082694 is revoked.

JOHN DURANT,

Director,

Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF CERTAIN
MINIATURE CERAMIC URNS CONTAINING PERFUME

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letters and the revocation of treatment relating to the classification of miniature ceramic urns containing perfume.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke two rulings and any treatment previously accorded by Customs to substantially identical transactions concerning the tariff classification of miniature ceramic urns containing perfume under the Harmonized Tariff Schedule of the United States (HTSUS). Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before December 15, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to: U.S. Customs Service, Office of Regulation and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue,

N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 927-2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke New York Ruling Letter (NY) 848884, dated January 30, 1990, and NY A89495, dated December 10, 1996, which pertain to the classification of miniature ceramic urns containing perfume. NY 848884 and A89495 are set forth respectively as "Attachment A" and "Attachment B" to this document.

Although in this notice Customs is specifically referring to two rulings, NYs 848884 and A89495, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings and no further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, other than the referenced rulings (see above), should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other rea-

sons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NYs 848884 and A89495, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 964603 and 964604 (see "Attachment C" and "Attachment D" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: October 27, 2000

MARVIN AMERNICK
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

January 30, 1990
CLA-2-33:S:N:N1:240 848884
Category: Classification
Tariff No.: 3303.00.2000; 6913.10.5000

MS. DORTHEA WARD-SMITH
P.O. Box 1877
Boca Raton, Florida 33435

Re: The tariff classification of Cream Perfume in ceramic containers from Greece.

DEAR MS. WARD-SMITH:

In your letter dated December 26, 1989, you requested a tariff classification ruling.

Samples of two ceramic containers filled with cream perfume were submitted with your inquiry. The cream perfume does not contain alcohol. The small ceramic jar is black with flowers imprinted on the jar. The jar measures approximately 2 inches in height and 1 1/2 inches in diameter. The jar is fitted with a lid. The large ceramic container is a round white jar with a lid. The jar measures approximately 2 1/2 inches in diameter and 1 inch in height. The lid has two

human figures imprinted on the top. The containers are not the normal containers used for the cream perfume. The container and the perfume will be separately classified.

The applicable HTS subheading for cream perfume will be 3303.00.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for perfume and toilet waters: not containing alcohol: other. The duty rate will be 5 percent *ad valorem*.

The applicable HTS subheading for the ceramic jars will be 6913.10.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for statuettes and other ornamental ceramic articles: of porcelain or china: other: other. The duty rate will be 9 percent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

December 10, 1996
CLA-2-29:RR:NC:2:240 A89495
Category: Classification
Tariff No.:3303.00.2000

MR. ROBERT C. KIRBY
437 S.E. 14th Street
Dania, FL 33004

Re: The tariff classification of Cream Perfume from Greece.

DEAR MR. KIRBY:

In your letter dated November 1, 1996, you requested a tariff classification ruling.

The item described in your literature is a cream perfume in a decorative ceramic urn. The urn measures approximately 3 inches in length. Based on the certificate of analysis, the cream perfume does not contain alcohol.

The applicable subheading for the Cream Perfume will be 3303.00.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for perfume and toilet waters: not containing alcohol. The rate of duty will be 3 percent *ad valorem*.

This product may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Stephanie Joseph at 212-466-5768.

ROGER J. SILVESTRI

Director,

National Commodity Specialist Division.

[ATTACHMENT C]

CLA-2 RR:CR:GC 964603 AML

Category: Classification

Tariff No.: 6913.90.50

MR. ROBERT C. KIRBY
437 S. E. 14th Street
Dania, FLA 33004

Re: Reconsideration of NY A89495; decorative ceramic urn containing cream perfume.

DEAR MR. KIRBY:

This is in reference to New York Ruling Letter (NY) A89495, issued to you on December 10, 1996, which concerned the classification of a decorative, ceramic urn containing cream perfume under the Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered NY A89495 and now believe that the classification set forth is incorrect.

Facts:

The decorative, ceramic urn that contains cream perfume is approximately 3" in length. The cream perfume does not contain alcohol. The ceramic urn is designed and constructed to resemble a Greek urn, and is decorated with "classic" Greek design.

Issue:

Whether the decorative, ceramic urn that contains cream perfume is classifiable as perfume under subheading 3303.00.30, HTSUS, or as a decorative ceramic article under subheading 6913.90.50, HTSUS?

Law and Analysis:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1, HTSUS, provides, in part, that "for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes[.]"

The HTSUS headings and subheadings under consideration are as follows:

3303.00 Perfumes and toilet waters:

Not containing alcohol:

3303.00.20 Other.

* * *

6913 Statuettes and other ornamental ceramic articles:

Other:
 6913.90.50 Other:

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The ENs to heading 3303 provide, in pertinent part, as follows:

This heading covers perfumes in liquid, cream or solid form (including sticks), and toilet waters, designed to give fragrance primarily to the human body.

Perfumes and scents generally consist of essential oils, floral concretes, absolutes or mixtures of synthetic odoriferous substances, dissolved in highly concentrated alcohol. They are usually compounded with slightly perfumed adjuvants and a fixative or stabiliser.

The ENs to heading 6913 provide, in pertinent part, as follows:

This heading covers a wide range of ceramic articles of the type designed essentially for the interior decoration of homes, offices, assembly rooms, churches, etc., and outdoor ornaments (e.g., garden ornaments).

(B) Tableware and other domestic articles only if the usefulness of the articles is clearly subordinate to their ornamental character, for example, trays moulded in relief so that their usefulness is virtually nullified, ornaments incorporating a purely incidental tray or container usable as a trinket dish or ashtray, miniatures having no genuine utility, value, etc.

(C) Articles, other than tableware and domestic articles, of the kind used for ornamenting or decorating the household, office, etc. For example, smokers' sets, jewel cases, cachou boxes, cigarette boxes, perfume burners, inkstands, book-ends, paperweights and similar desk furnishings and picture frames.

The miniature ceramic urn, upon importation, is *prima facie* classifiable in two headings: 3303 and 6913, HTSUS. Therefore, classification must be made pursuant to GRI 2(b) and 3. GRI 2(b) provides in pertinent part that "the classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." GRI 3 provides, in pertinent part, that:

3. When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

The ceramic containers and cream perfume form a composite good made up of different components. See GRI 3(b) EN (IX). As regards the essential character of the goods, we note several decisions by the Court of International Trade (CIT) which addressed "essential character" for purposes of GRI 3(b). *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), affirmed, 119 F.3d 969 (Fed. Cir. 1997), involved the classification of shower curtain sets, consisting of an outer textile curtain, inner plastic magnetic liner, and plastic hooks. The Court examined the role of the constituent materials in relation to the use of the goods and found that, although the relative value of the textile curtain was greater than that of the plastic liner, and that although the textile curtain also served protective, privacy and decorative functions, because of the fact that the plastic liner served the indispensable function of keeping water inside the shower, the plastic liner imparted the essential character upon the set. See also *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co. v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995), in which the Court also looked to the role of the constituent material in relation to the use of the goods to determine essential character.

We find that the essential character of the ceramic urn containing cream perfume is imparted by the ceramic urn. The ceramic urn is designed and constructed to resemble a Greek urn, and is decorated with "classic" Greek design. The ceramic urn is decorative and will likely be retained for such purposes long after the perfume is exhausted or evaporates. Therefore, the articles are classifiable in heading 6913, HTSUS, as decorative ceramic articles.

Holding:

The decorative, ceramic urn that contains cream perfume is classifiable under subheading 6913.90.50, HTSUS, as statuettes and decorative articles of ceramic, other, other, other.

Effect on Other Rulings:

NY A89495 is hereby REVOKED.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

CLA-2 RR:CR:GC 964604 AML
Category: Classification
Tariff No.: 6913.90.50

Ms. DORTHEA WARD-SMITH
P.O. Box 1877
Boca Raton, FLA 33435

Re: Reconsideration of NY 848884; decorative ceramic urn containing cream perfume.

DEAR Ms. WARD-SMITH:

This is in reference to New York Ruling Letter (NY) 848884, issued to you on January 30, 1990, which concerned the classification of a decorative, ceramic urn containing cream perfume under the Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered NY 848884 and now believe that the classification set forth is incorrect.

Facts:

The articles were described in NY 848884 as follows:

Samples of two ceramic containers filled with cream perfume were submitted with your inquiry. The cream perfume does not contain alcohol. The small ceramic jar is black with flowers imprinted on the jar. The jar measures approximately 2 inches in height and 1 1/2 inches in diameter. The jar is fitted with a lid. The large ceramic container is a round white jar with a lid. The jar measures approximately 2 1/2 inches in diameter and 1 inch in height. The lid has two human figures imprinted on the top. The containers are not the normal containers used for the cream perfume.

Issue:

Whether the decorative, ceramic urn that contains cream perfume is classifiable as perfume under subheading 3303.00.30, HTSUS, or as a decorative ceramic article under subheading 6913.90.50, HTSUS?

Law and Analysis

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRIs). GRI 1, HTSUS, provides, in part, that "for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes[.]"

The HTSUS headings and subheadings under consideration are as follows:

3303.00	Perfumes and toilet waters:
	Not containing alcohol:
3303.00.20	Other.
	* * *
6913	Statuettes and other ornamental ceramic articles:
	Other:
	Other:
6913.90.50	Other.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The ENs to heading 3303 provide, in pertinent part, as follows:

This heading covers perfumes in liquid, cream or solid form (including sticks), and toilet waters, designed to give fragrance primarily to the human body.

Perfumes and scents generally consist of essential oils, floral concretes, absolutes or mixtures of synthetic odoriferous substances, dissolved in highly concentrated alcohol. They are usually compounded with slightly perfumed adjuvants and a fixative or stabiliser.

The ENs to heading 6913 provide, in pertinent part, as follows:

This heading covers a wide range of ceramic articles of the type designed essentially for the interior decoration of homes, offices, assembly rooms, churches, etc., and outdoor ornaments (e.g., garden ornaments).

(B) Tableware and other domestic articles only if the usefulness of the articles is clearly subordinate to their ornamental character, for example, trays moulded in relief so that their usefulness is virtually nullified, orna-

ments incorporating a purely incidental tray or container usable as a trinket dish or ashtray, miniatures having no genuine utility, value, etc.

(C) Articles, other than tableware and domestic articles, of the kind used for ornamenting or decorating the household, office, etc. For example, smokers' sets, jewel cases, cachou boxes, cigarette boxes, perfume burners, inkstands, book-ends, paperweights and similar desk furnishings and picture frames.

The miniature ceramic urn, upon importation, is *prima facie* classifiable in two headings: 3303 and 6913, HTSUS. Therefore, classification must be made pursuant to GRI 2(b) and 3. GRI 2(b) provides in pertinent part that "the classification of goods consisting of more than one material or substance shall be according to the principles of rule 3." GRI 3 provides, in pertinent part, that:

3. When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

The ceramic containers and cream perfume form a composite good made up of different components. See GRI 3(b) EN (IX). As regards the essential character of the goods, we note several decisions by the Court of International Trade (CIT) which addressed "essential character" for purposes of GRI 3(b). *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), affirmed, 119 F.3d 969 (Fed. Cir. 1997), involved the classification of shower curtain sets, consisting of an outer textile curtain, inner plastic magnetic liner, and plastic hooks. The Court examined the role of the constituent materials in relation to the use of the goods and found that, although the relative value of the textile curtain was greater than that of the plastic liner, and that although the textile curtain also served protective, privacy and decorative functions, because of the fact that the plastic liner served the indispensable function of keeping water inside the shower, the plastic liner imparted the essential character upon the set. See also *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), motion for rehearing and reconsideration denied, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co. v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995), in which the Court also looked to the role of the constituent material in relation to the use of the goods to determine essential character.

We find that the essential character of the ceramic urn containing cream perfume is imparted by the ceramic urn. The ceramic urn is designed and constructed to resemble a Greek urn, and is decorated with "classic" Greek characters and figures. The ceramic urn is decorative and will likely be retained for such purposes long after the perfume is exhausted or evaporates. Therefore, the articles are classifiable in heading 6913, HTSUS, as decorative ceramic articles.

Holding:

The decorative, ceramic urn that contains cream perfume is classifiable under subheading 6913.90.50, HTSUS, as statuettes and decorative articles of ceramic,

other, other, other.

Effect on Other Rulings:

NY 848884 is hereby REVOKED.

JOHN DURANT,
Director,
Commercial Rulings Division.

cc: National Commodity Specialist Division
NIS Stephanie Joseph

PROPOSED MODIFICATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF OPTICAL ENCODERS

AGENCY: U. S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of ruling letter and revocation of treatment relating to tariff classification of optical encoders.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling relating to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of optical encoders, and to revoke any treatment Customs has previously accorded to substantially identical transactions. These articles measure the velocity of rotating shafts by converting the rotations to pulses of electricity, the output data suitable for direct input to a computer or other control system. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before December 15, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927-0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify a ruling relating to the tariff classification of optical encoders. Although in this notice Customs is specifically referring to one ruling, *HQ 962138*, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one/ones identified. No further rulings have been identified. Any party who has received an interpretative ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subse-

quent to this notice.

In HQ 962138, dated July 28, 1999, certain optical encoders were held to be classifiable in subheading 9029.10.80, HTSUS, as revolution counters. This ruling was based on Customs belief that the converting of mechanical rotary motion to an electrical output involved counting rotations of the shaft. HQ 962138 is set forth as "Attachment A" to this document.

It is now Customs position that by function and design these encoders are a type of velocity transducer classifiable in subheading 8543.89.40, HTSUS, as electric transducers. Pursuant to 19 U.S.C. 1625(c)(1)), Customs intends to modify HQ 962138, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis in HQ 964599, which is set forth as "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Date: October 27, 2000

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

July 28, 1999
CLA-2 RR:CR:GC 962138 HMC
Category: Classification
Tariff No.: 9107.00.80/8537.10.90/
9029.10.80/8531.80.90/3926.90.98

MR. RONALD P. RICCA
ALLEN-BRADLEY/ROCKWELL AUTOMATION
1 Allen-Bradley Drive
Mayfield Heights, OH 44124-6118

Re: Timing Relays, Motor Controllers, Encoders, Pilot Lights, Marking Strips;
PC 861139, Modified.

DEAR MR. RICCA:

This is in response to your letter, dated October 14, 1996, on behalf of Allen-Bradley, requesting reconsideration of Preclassification Ruling (PC) 861139, dated April 9, 1991 and its Supplement 1, dated May 21, 1991. In PC 861139, Customs classified various electric products, including timing relays, motor controllers,

encoders, pilot lights and marking strips under different subheadings of the Harmonized Tariff Schedule of the United States (HTSUS). We regret the delay.

Facts:

In PC 861139, Customs determined the classification of various electrical equipment, including timing relays, motor controllers, encoders, pilot lights and marking strips. The PC merely lists the items and the applicable classification subheadings. No reasoning was provided. Customs classified the timing relays under subheading 9107.00.80, HTSUS, the motor controller under subheading 8537.10.00, HTSUS (now subheading 8537.10.90, HTSUS), the encoders under subheading 8543.80.40, HTSUS, the pilot lights under subheading 8543.89.70, HTSUS, and the marking strips under subheading 3926.90.90, HTSUS.

The following relevant descriptions were provided:

1. Bulletin 700 Solid State Timing Relays:

"These solid state timing devices can be mounted on either a 2-pole or 4-pole relay, or with the use of an adapter plate, you can mount this device directly on a panel or Type 700-MP universal mounting strip. Please refer to the attached literature for additional information." The attached literature provides a technical description of the relays.

2. Bulletin 150 Smart Motor Controllers

"The Bulletin 150 Smart Motor Controller is a compact, simple to use, solid-state controller designed for low horsepower squirrel cage induction motors. It is intended to relieve the starting torque surge encountered in the typical across the line starting. This will allow for smoother starts and decreased equipment downtime due to shock and vibration problems." It also refers to technical literature.

3. Bulletin 845 Optical Encoders

"Bulletin 845A, 845B and 845C industrial optical encoders are designed to convert mechanical rotary motion to an accurate electrical output. A non-contacting optical design provides for high speed, low torque operation. Single-turn and multi-turn module are available. The Bulletin 845D is a single turn Absolute Position Encoder that digitizes shaft angle position into one of a number of absolute code formats. The 845D uses a single laser diode and a fiber optic module to produce a concentrated beam of light that is passed through a code disk and picked up as high level optical signals." It then refers to technical literature.

4. Allen-Bradley Pilot Lights

"Allen-Bradley offers three main types of pilot lights. They are standard, push-to-test and cluster. The standard and push-to-test pilot lights are basically the same device. The pilot light body consists of a plastic housing in which the contacts and transformer are housed. The push-to-test pilot light has a moveable operator that allows for voltage to be applied to the pilot light bulb in order to test it for illumination. The cluster Pilot Light can contain from 2 - 4 cluster LED type lamps." It then refers to technical literature.

5. Plastic Marking Strips

"Allen-Bradley 1492 Marking Strips are molded, plastic articles designed specifically for the Bulletin 1492 Terminal Blocks. These marking strips fit on the top portion of terminal strip. A self-adhesive, pre-printed label is then affixed to the marking strip." It then refers technical literature.

On June 23, 1999, and July 8, 1999, at our request, you submitted additional information on the encoders and the smart motor controllers. The encoders are described as follows:

"Encoders

An encoder is a device that converts mechanical rotary motion to an accurate electrical output. This conversion is done by counting the number of pulses per

revolution on a coded disk built into the encoder.... On the outer edge of the disk, they [sic] are a number of slots that would allow light to pass through. The light is detected by a photoelectric sensor built into the encoder. As the disk rotates, the light beam is broken by the metal part of the disk between the slots. So when the light is sensed, there is a pulse generated....

Within the encoder, there is electronic circuitry that will sense the output waveform [the pulse] from the coded disk and convert it into a data format that can be read by the control system. A typical type of data format is BCD (Binary Coded Decimal). This data is read by the controller through some type of interface module...."

The smart motor controllers are further described as follows:

"Bulletin 150 Smart Motor Controllers

The Smart Motor Controller is a solid state device used to control the starting, stopping and overall operation of low horsepower motors. This controller has built in circuitry to reduce starting torque surge, allow for smoother starts and control the shut down of the motor...

If you replace the conventional motor starter with a Smart Motor Controller, you now have a device the [sic] will control the starting of the motor by allowing the motor to ramp up to a desired speed, rather than just applying full power. The Smart Motor Controller will maintain that speed and will allow you to easily change the speed while the motor is running. When you are ready to shut the motor down, The Smart Motor Controller has a motor braking feature that will aid the motor in stopping."

The HTSUS provisions under consideration for the timing relays are as follows:

8536 Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V:

Relays:

8536.49.00	Other.
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9107.00 Time switches with clock or watch movement or with synchronous motor:

9107.00.80 Valued over \$5 each.

The HTSUS provisions under consideration for the motor controllers are as follows:

8504 Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof:

8504.40 Static converters:

8504.40.40 Speed drive controllers for electric motors.

8537 Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517:

8537.10 For a voltage not exceeding 1,000 V:

8537.10.90	Other.
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The HTSUS provisions under consideration for the encoders are as follows:

8543 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:

Other machines and apparatus:

8543.89 Other:

Other:

Other:

8543.89.96 Other.

* * *
9029 Revolution counters, production counters, taximeters, odometers, pedometers and the like; speedometers and tachometers, other than those of heading 9014 or 9015; stroboscopes; parts and accessories thereof:

9029.10 Revolution counters, production counters, taximeters, odometers, pedometers and the like:

9029.10.80 Other.

The HTSUS provisions under consideration for the pilot lights are as follows:

8543 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:

Other machines and apparatus:

8543.89 Other:

8543.89.70 Electrical luminescent lamps.

* * *
8531 Electrical sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof:

8531.80 Other apparatus:

Other:

8531.80.90 Other.

The HTSUS provisions under consideration for the plastic marking strips are as follows:

3926 Other articles of plastics and articles of other materials of headings 3901 to 3914:

3926.90 Other:

3926.90.98 Other.

* * *
8538 Parts suitable for use solely or principally with the apparatus of heading 8535, 8536 or 8537:

8538.90 Other:

Other:

8538.90.80 Other.

I. Timing Relays.

Issue:

Whether the timing relays are classifiable as time switches with a clock or watch movement or with a synchronous motor under subheading 9107.00.80, HTSUS, or as electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V under subheading 8536.49.00, HTSUS.

Law and Analysis:

Merchandise is classifiable under the HTSUS, in accordance with the General Rules of Interpretation (GRI). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GIS 2 through 6.

Section XVI, Note 1(n) states that this Section does not cover clocks, watches or other articles of chapter 91. Chapter 91, Note 1(g) states that Chapter 91 does not cover articles of Chapter 85, not yet assembled together or with other components into watch or clock movements or into articles suitable for use solely or principally as parts of such movements (Chapter 85).

The Harmonized Commodity Description And Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized system. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the Notes should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989). General EN to Chapter 91, at page 1663, states that

This Chapter covers certain apparatus designed mainly for measuring time or for effecting some operation in relation to time. It includes timepieces suitable for carrying on the person (watches and stop-watches), other timepieces (ordinary clocks, clocks with watch movements, alarm clocks, marine chronometers, clocks for motor vehicles, etc.), and also time recording apparatus, time interval measuring instruments and time switches; in general, it also covers parts of these articles.

Also, at page 1665, the General EN to Chapter 91 states

(E) **Synchronous motor clocks.** These are connected to a controlled frequency current and therefore consist solely of the motor and the train, without a controlling device.

EN 91.07, at page 1671 states that

This heading covers devices which do not have the character of clocks of heading 91.05, but are mainly designed to make or break electric circuits automatically at given times, usually at times determined according to a previously established daily or weekly programme. To be included in this heading these devices must have a movement of the watch or clock type (including secondary or synchronous motor clock movements) or a synchronous motor with or without reduction gear.

Time switches are used for the control of lighting circuits (for public places, shop windows, staircases, illuminated signs, etc.), heating circuits (water heaters, etc.), cooling installations, pumps, two-rate electricity supply meters, etc. They consist essentially of a mechanical or electric movement of the watch or clock type or a synchronous motor, usually a dial with or without hands, a time-regulating device (levers and pins), together with systems of driving relays, switches and commutators. The whole is enclosed in a case with terminals. The dial is usually marked in hours and sometimes also in days and months; levers or pins around its periphery actuate the contact devices at the desired times.

Time switches may be set in action by thermostats, pressure regulators, water level regulators, *etc.*

The heading also includes switches for making and breaking the circuit supplying electrical apparatus (television receivers, irons, washing machines, billiard table lights, *etc.*), switching on when coins are inserted and switching off through the action of a synchronous motor, the interval being determined by the number of coins inserted.

In the original submission you state that the subject timing relays do not contain any type of watch or clock movement. The relay's time delay feature is obtained by either a potentiometer or a self-contained time delay built into the relay to eliminate unwanted tampering. Hence, you argue the relays are classifiable under subheading 8536.49. You cite HQ 954491, dated July 18, 1997, and try to distinguish the products classified in that ruling from Allen-Bradley's solid state timing relays. In that ruling Customs found that timing relays which make or break electrical circuits automatically at given times are specifically classifiable under subheading 9107.00.80, HTSUS. We find that the function performed by the subject timing relays is like the one in HQ 954491. The literature you provided shows that the merchandise is available with up to two timed and two instantaneous contacts. They are designed for applications where a specific time delay is required and inadvertent timing changes must be avoided. Even though the time delays are self-contained, we find that the Bulletin 700, solid state timing relays are classifiable under subheading 9107.00.80, HTSUS.

2. Bulletin 150 Smart Motor Controllers

Issue:

Whether the motor controllers are classifiable as boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517, for a voltage not exceeding 1000 V, under subheading 8537.10.90, HTSUS, or as static converters, speed drive controllers for electric motors, under subheading 8504.40.40, HTSUS.

Law and Analysis

EN 85.04, at page 1448, states:

(II) ELECTRICAL STATIC CONVERTERS

The apparatus of this group are used to convert electrical energy in order to adapt it for further use. They incorporate converting elements (*e.g.*, valves) of different types. They may also incorporate various auxiliary devices (*e.g.*, transformers, induction coils, resistors, command regulators, *etc.*). Their operation is based on the principle that the converting elements act alternately as conductors and non-conductors.

The fact that these apparatus often incorporate auxiliary circuits to regulate the voltage of the emerging current does not affect their classification in this group, nor does the fact that they are sometimes referred to as voltage or current regulators.

EN 85.37, at page 1506, states:

These consist of an assembly of apparatus of the kind referred to in the two preceding headings (*e.g.*, switches and fuses) on a board, panel, console, *etc.*, or mounted in a cabinet, desk, *etc.* They usually also incorporate meters, and sometimes also subsidiary apparatus such as transformers, valves, voltage regulators, rheostats or luminous circuit diagrams.

The goods of this heading vary from small switchboards with only a few switches, fuses, *etc.* (*e.g.*, for lighting installations) to complex control panels for machine-tools, rolling mills, power stations, radio stations, *etc.*, including assemblies of several of the articles cited in the text of this heading.

The heading also covers:

- (1) Numerical control panels with built-in automatic data processing machine, which are generally used to control machine-tools.
- (2) Programmed switchboards to control apparatus; these permit variations in the choice of operations to be followed. They are normally used in domestic electrical appliances, such as washing machines and dish washers.
- (3) "Programmable controllers" which are digital apparatus using a programmable memory for the storage of instructions for implementing specific functions such as logic, sequencing, timing, counting and arithmetic, to control, through digital or analog input/output modules, various types of machines.

The heading does not cover automatic controlling apparatus of heading 90.32.

The subject merchandise was described as a solid state controller designed for low horsepower squirrel cage induction motors. Its relieves the starting torque surge encountered in the typical across the line starting and has four standard modes of operation: soft start with selectable kickstart, current limit start, dual ramp start and full voltage start. Nothing provided shows that current is being converted. We find that the smart motor controllers are not described by heading 8504, HTSUS. They are classifiable under subheading 8537.10.90, HTSUS.

3. Bulletin 845 Optical Encoders

Issue:

Whether the optical encoders are classifiable as other revolution counters, production counters, taximeters, odometers, pedometers and the like under subheading 9029.10.80, HTSUS, or as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter under subheading 8543.89.96, HTSUS.

Law and Analysis

EN 85.43, at page 1518, states:

This heading covers all electrical appliances and apparatus, not falling in any other heading of this Chapter, nor covered more specifically by a heading of any other Chapter of the Nomenclature, nor excluded by the operation of a Legal Note to Section XVI or to this Chapter. The principal electrical goods covered more specifically by other Chapters are electrical machinery of Chapter 84 and certain instruments and apparatus of Chapter 90.

The electrical appliances and apparatus of this heading must have individual functions. The introductory provisions of Explanatory Note to heading 84.79 concerning machines and mechanical appliances having individual functions apply, *mutatis mutandis*, to the appliances and apparatus of this heading.

Most of the appliances of this heading consist of an assembly of electrical goods or parts (valves, transformers, capacitors, chokes, resistors, etc.) operating wholly electrically. However, the heading also includes electrical goods incorporating mechanical features provided that such features are subsidiary to the electrical function of the machine or appliance.

EN 90.29, at page 1646, states:

(A) COUNTING DEVICES

(1) Revolution counters.

These instruments count the number of revolutions of a mechanical part (e.g., machine shaft). They consist mainly of a driving spindle geared to pointer or drum indicators. They usually have a device for re-setting the counter to zero. The counters may be coupled to the revolving part either directly (in some cases the part drives the gearing itself) or by remote control. The driving spindle may be operated by a rotary, alternating or pulsating movement of the turning part (e.g., encoders).

You describe the subject optical encoders as industrial optical encoders designed to convert mechanical rotary motion to an accurate electrical output. A non-contacting optical design provides for high speed, low torque operation. Single-turn and multi-turn modules are available. Model Bulletin 845D is described as a single turn Absolute Position Encoder that digitizes shaft angle position into one of a number of absolute code formats. It uses a single laser diode and a fiber optic module to produce a concentrated beam of light that is passed through a code disk and picked up as high level optical signals.

In your June 23, 1999 submission, you explain that encoders have a number of slots in a disk that allows a beam of light to pass through. The light is detected by a photoelectric sensor built into the encoder. As the disk rotates, the metal part between the slots breaks the light. The break in the light generates a pulse known as a high condition. For each slot on the disk, a pulse is generated. Thus, encoders are typically rated by the number of pulses per turn. If there are 500 slots on a coded disk that generates a 500 pulse waveform per one complete rotation, the encoder is rated as a 500 pulse per turn encoder. A single slot located just under the outer row of 500 slots acts as a marker to signal that a complete rotation was made. Electronic circuitry within the encoder senses the output waveform from the coded disk and converts it into a data format that can be read by a control system. No further information about the subject encoder's principal function or use was provided. We find that the encoders are described by heading 9029, HTSUS, because they perform the function of revolution counters described in the ENs. The Bulletin 845 optical encoders are thus classifiable under subheading 9029.10.80, HTSUS.

4. Pilot Lights

Issue:

Whether the pilot lights are classifiable as electric luminescent lamps under subheading 8543.89.70, HTSUS or as other electric sound or visual signaling apparatus under subheading 8531.80.90, HTSUS.

Law and Analysis:

As stated, EN 85.43, at page 1518, provides:

This heading covers all electrical appliances and apparatus, not falling in any other heading of this Chapter, nor covered more specifically by a heading of any other Chapter of the Nomenclature, nor excluded by the operation of a Legal Note to Section XVI or to this Chapter. The principal electrical goods covered more specifically by other Chapters are electrical machinery of Chapter 84 and certain instruments and apparatus of Chapter 90.

EN 85.31, states at page 1496, that

With the exception of signaling apparatus used on cycles or motor vehicles (heading 85.12) and that for traffic control on roads, railways, *etc.* (heading 85.30), this heading covers all electrical apparatus used for signaling purposes, whether using sound for the transmission of the signal (bells, buzzers, hooters, *etc.*) or using visual indication (lamps, flaps, illuminated numbers, *etc.*), and whether operated by hand (*e.g.*, door bells) or automatically (*e.g.*, burglar alarms).

Static signs, even if lit electrically (*e.g.*, lamps, lanterns, illuminated panels, *etc.*) are not regarded as signaling apparatus. They are therefore not covered by this heading but are classified in their own appropriate headings (headings 83.10, 94.05, *etc.*).

The information provided shows that the pilot lights are electrical apparatus used for signaling purposes. The pilot lights are made of a plastic housing containing electrical contacts, a transformer and one or more LED's. They are used to indicate machine status, such as on/off, or other conditions. The merchandise is thus described by heading 8531, HTSUS. Since the pilot lights are described by

heading 8531 they cannot be classified under subheading 8543.89.70, HTSUS. They are classifiable under subheading 8531.80.90, HTSUS.

5. Plastic Marking Strips

Issue:

Whether the plastic marking strips are classifiable as other parts suitable for use solely or principally with apparatus of heading 8535, 8536 or 8537 under subheading 8538.90.80, HTSUS, or as other articles of plastics under subheading 3926.90.98, HTSUS.

Law and Analysis:

PC 861139 classified the subject merchandise under subheading 3926.90.98 as other articles of plastics because they were considered parts of general use. Note 2(p) to Chapter 39, HTSUS, states that the Chapter does not cover articles of Section XVI. Thus, if the article is classifiable under a heading of Chapter 85 (a Chapter of Section XVI), it cannot be classified under heading 3926, HTSUS.

Note 1(g) to Section XVI states that the Section does not cover parts of general use, as defined in note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39). Section XVI, Note 2(a), HTSUS, states:

Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of chapters 84 and 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8485, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;
- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading ... are to be classified with the machines of that kind....

You claim that the marking strips are molded specifically to fit terminal blocks that are described by heading 8536. Assuming, *arguendo*, that the terminal blocks are articles described by heading 8536, we find that the marking strips are not parts of the terminal blocks.

It has been held that a part of an article is something that is an integral component of the article with which it is used. See *Sharp Microelectronics Technology, Inc. v. United States*, 932 F. Supp. 1499, 1505 (Ct. Int'l Trade 1996), *aff'd*, 122 F.3d 1446, (Fed. Cir. 1997). See also 956884, dated November 18, 1994. It is Customs view that the marking strips are not integral to the terminal blocks and that they are necessary for their operation. The marking strips are designed to receive a self-adhesive, pre-printed label that serves to identify the terminal blocks, but they could also be used for a similar purpose with other machines, *i.e.*, they are "general purpose" type goods. Since the marking strips are not parts of the terminal blocks they must be classified according to their constituent material. The marking strips are therefore classifiable under subheading 3926.90.98, HTSUS.

Holding:

The timing relays are classifiable under subheading 9107.00.80, HTSUS, as "Time switches with clock or watch movement or with synchronous motor: Valued over \$5 each."

The motor controllers are classifiable under subheading 8537.10.90, HTSUS, as "Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517: For a voltage not exceeding 1,000 V: Other."

The encoders are classifiable under subheading 9029.10.80, HTSUS, as "Revolution counters, production counters, taximeters, odometers, pedometers and the

like; speedometers and tachometers, other than those of heading 9014 or 9015; stroboscopes; parts and accessories thereof: Revolution counters, production counters, taximeters, odometers, pedometers and the like: Other."

The pilot lights are classifiable under subheading 8531.80.90, HTSUS, as "Electrical sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof: Other apparatus: Other: Other."

The marking strips are classifiable under subheading 3926.90.98, HTSUS, as "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other."

Effect on Other Rulings:

PC 861139, dated April 9, 1991, is modified as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

CLA-2 RR:CR:GC 964599 JAS
Category: Classification
Tariff No.: 8543.89.40

MR. RONALD P. RICCA
ALLEN-BRADLEY/ROCKWELL AUTOMATION
1 Allen-Bradley Drive
Mayfield Heights, OH 44124-6118

Re: HQ 962138 Modified; Optical Encoders.

DEAR MR. RICCA:

In HQ 962138, which we issued to you on July 28, 1999, certain optical encoders were held to be classifiable in subheading 9029.10.80, Harmonized Tariff Schedule of the United States (HTSUS), as other revolution counters. This ruling modified Preclassification Decision (PC) 861139, dated April 9, 1991, and its Supplement 1, dated May 21, 1991, with respect to several articles, including these encoders. We have reconsidered the classification of optical encoders expressed in HQ 962138 and now believe it is incorrect.

Facts:

The articles at issue here were identified in HQ 962138 as Bulletin 845A, B, and C industrial optical encoders designed to convert mechanical rotary motion to an accurate electrical output. The 845D was described as a single turn Absolute Position Encoder that digitizes shaft angle position into one of a number of absolute code formats. On the outer edge of a coded disk built into the encoder are a number of slots that allow light to pass through. The encoder utilizes a single laser diode and fiber optic module to produce a concentrated beam of light. As the disk rotates, a photoelectric sensor in the encoder senses the light as it appears through the slots. Each time the light appears a pulse is generated. Electronic circuitry within the encoder converts the pulses into a usable data format which a computer or control systems reads by means of an interface module.

Initially, PC 861139 classified the encoders in subheading 8543.80.40 (now 89.40), HTSUS, a provision for electric synchros and transducers. In undertaking this reconsideration, HQ 962138 noted that PC 861139 merely listed the items and the

applicable classification subheadings, and provided no reasoning. With respect to the encoders, it was noted that aside from the descriptions you provided, there was no information about their principal function or use. On the basis that a certain number of pulses generated equated to one complete rotation of the shaft, HQ 962138 concluded that the encoders performed the function of revolution counters described by heading 9027, HTSUS. For the reasons that follow, we believe that the correct subheading for these encoders is 8543.89.40, HTSUS. We regret the delay in resolving this matter and any resulting confusion.

The HTSUS provisions under consideration are as follows:

8543 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [Chapter 85]....:

8543.89 Other:

8543.89.40 Electric synchros and transducers...

Other:

8543.89.96 Other

9029 Revolution counters, production counters...and the like...:

9029.10 Revolution counters, production counters...and the like:

9029.10.80 Other

Issue:

Whether the Bulletin 845 series encoders are goods of heading 9029.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. Chapter 90, Note 2(a), HTSUS, states, in part, that parts and accessories which are goods included in any heading of Chapter 90, or of Chapter 84, 85 or 91 (other than heading 8485, 8548 or 9033) are in all cases to be classified in their respective headings. Note 2(b) states, in part, that other parts and accessories are classifiable with the machines, instruments or apparatus with which they are solely or principally used.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Heading 8543 is in Section XVI, HTSUS. Note 1(m) to Section XVI excludes articles of Chapter 90. Therefore, if the encoders at issue here are articles of heading 9029, or of any other heading of Chapter 90, they cannot be classified in heading 8543 or elsewhere in Chapter 85. The heading 9029 ENs, on p. 1646, under the general heading (A) COUNTING DEVICES, describe (1) Revolution counters as follows:

These instruments count the number of revolutions of a mechanical part (e.g., machine shaft). They consist mainly of a driving spindle geared to pointer or drum indicators. They usually have a device for re-setting the counter to zero. The counters may be coupled to the revolving part either directly (in some cases the part drives the gearing itself) or by remote control. The driving spindle may be operated by a rotary, alternating or pulsating movement of the turning part (e.g., encoders).

Also, the 9029 ENs, on p. 1647, describe (B) SPEED INDICATORS AND TACHOMETERS as:

instruments that differ from the revolution counters of Part (A) in that they indicate the number of revolutions, speed, output, etc., **per unit of time** (e.g., revolutions per minute, miles per hour, kilometers per hour, meters per minute. Utilizing a clock or watch movement together with a measuring mechanism, tachometers measure rotational speed by dividing the absolute number of rotations by the elapsed time.

These ENs suggest that revolution counters count the number of shaft rotations while tachometers measure angular speed. With respect to revolution counters, the encoders at issue lack the driving spindle and the pointer or drum indicators, or their electronic equivalent, referenced in the ENs. Because they are not actually counting shaft rotations or keeping the count, they also lack a device for resetting the counter to zero. The encoders at issue merely convert shaft rotations to electric pulses in the form of positional information data about, for example, where a shaft is in its rotation cycle. This is data which the encoders send, through an interface, to any one of a number of computers, control systems, or other instrumentation. These encoders are transducers which convert shaft rotations into an output of electric pulses. They are analogous to a device, useful to the blind, which would ring a bell each time a slowing rotating shaft completes a revolution. By converting the rotation to a pulse of sound, there would now be information the blind could use, but someone would still have to do the counting and speed determination. The optical encoders at issue are not within the EN description either for rotation counters or for tachometers.

The term *transducer* encompasses devices which convert variations in one energy form into corresponding variations in another, usually electrical form. Among these is the *velocity transducer* in which the velocity of rotating shafts can be measured by an optical encoder with a suitable light source and detector. By choosing an appropriate pattern, the output data can be produced in binary form suitable for direct input to a computer system. Optical encoders come in two kinds, *absolute encoders* and *incremental encoders*. The *absolute encoder* is a *position transducer* with output in the form of parallel binary digits. See McGraw-Hill Encyclopedia of Science & Technology, Vol. 18, pp. 459-462 (6th ed., 1987).

Heading 8543 covers all electrical appliances and apparatus not falling in any other heading of Chapter 85, nor covered more specifically by a heading of any other chapter of the HTSUS, or excluded by a legal note to Section XVI or to Chapter 85. The cited technical source indicates that optical encoders are a type of velocity transducer. Subheading 8543.89.40 specifically provides for electric synchros and transducers. Notwithstanding the fact that optical encoders might function as parts of larger instrumentation systems, they are goods included in heading 8543, in accordance with Chapter 90, Note 2(a), HTSUS.

Holding:

Under the authority of GRI 1, the Bulletin 845A, 845B and 845C industrial optical encoders are provided for in heading 8543. They are classifiable in subheading 8543.89.40, HTSUS. HQ 962138, dated April 9, 1991, is modified as to this merchandise.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO CLASSIFICATION OF MOLDED HOLIDAY CANDLES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of four tariff classification ruling letters and treatment relating to the classification of molded holiday candles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking four ruling letters pertaining to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of molded holiday candles and any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed revocation was published on September 20, 2000, in the *Customs Bulletin*, Volume 34, Number 38. No comments were received.

EFFECTIVE DATE: This notice is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 14, 2001.

FOR FURTHER INFORMATION CONTACT: John G. Black, General Classification Branch (202) 927-1317.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, col-

lect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs has issued a notice of proposed revocations of four ruling letters pertaining to the tariff classification of molded holiday candles, published on September 20, 2000, in the *Customs Bulletin*, Volume 34, Number 38. Although in this notice Customs is specifically referring to New York Ruling Letters (NY) C82327, dated December 15, 1997; C82940, dated December 31, 1997; C82941, dated December 31, 1997, and B83722, dated February 13, 1998, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

In NY C82327, dated December 15, 1997; C82940, dated December 31, 1997; C82941, dated December 31, 1997, and B83722, dated February 13, 1998, Customs ruled that molded holiday candles were classified in heading 3406, HTSUS, which provides for "Candles, tapers, and the like." Since the issuance of those rulings, Customs has had a chance to reconsider the classification of this merchandise based on Customs Informed Compliance Publication on the Classification of Festive Articles published in the *Customs Bulletin*, Volume 32, Numbers 2/3, dated January 21, 1998 and Headquarters Ruling Letter (HQ) 961873, dated January 29, 1999, and has determined that the four rulings are in error. We have determined that certain three-dimensional molded holiday candles are within the class of "festive articles" and are properly classified in subheadings 9505.10.25,

HTSUS, as "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Articles for Christmas festivities and parts and accessories thereof: Christmas ornaments: Other: Other" in the case of the Christmas candles and in subheading 9505.90.60 as "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other" in the case of the Thanksgiving candles.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY C82327, C82940, C82941, and B83722, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 962900 (see Attachment to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. In accordance with 19 U.S.C. 1625(c), this ruling revoking NY C82327, C82940, C82941, and B83722 will become effective 60 days after its publication in the *Customs Bulletin*.

Dated: October 27, 2000

MARVIN AMERNICK
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

October 27, 2000
CLA-2 RR:CR:GC 962900 JGB
Category: Classification
Tariff No.: 9505.10.5020; 9505.90.60

MRS. JEAN FAIR
IMPORT MANAGER
LISS BROTHERS, INC.
14501 Townsend Road
Philadelphia, PA 19154

Re: Revocation of NY C82327, C82940, C82941 and B83722; Decorative Molded Three-Dimensional Holiday Candles; *Midwest of Cannon Falls, Inc. v. United States*; Festive Articles.

DEAR MRS. FAIR:

This is in response to your letter of April 13, 1999, requesting reconsideration of New York Ruling Letters (NY) C82327, dated December 15, 1997; C82940, dated December 31, 1997; C82941, dated December 31, 1997, and B83722, dated February 13, 1998, issued to Morris Friedman & Co., acting on behalf of Liss Brothers, Inc., concerning the classification, under the Harmonized Tariff Schedule of the

United States (HTSUS), of four styles of decorative molded three-dimensional holiday candles. We regret the delay in responding.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocations of NY C82327, C82940, C82941 and B83722 was published on September 20, 2000, in the *Customs Bulletin*, Volume 34, Number 38. No comments were received in response to the notice.

This letter is to inform you that NY C82327, C82940, C82941 and B83722 no longer reflect the view of the Customs Service concerning the classification of decorative molded three-dimensional holiday candles and that the following reflects our position for these products.

Facts:

NY C82327 describes Item # 19003CD, a candle molded in the shape of Santa Claus. Santa's suit and cap are colored red with white trimming. Santa has a black belt and holds a decorated Christmas tree and a black bag. The candle, measuring about 4 inches in height by 2 1/4 inches in width, has a level wax bottom, allowing it to rest on a flat surface.

NY C82940 describes Item # 18059, a candle molded in the shape of a decorated Christmas tree, surrounded by several mice, gold stars, and other Christmas ornaments. Several wrapped Christmas presents rest at its base. The candle measures approximately 6 inches in height and 4 1/4 inches at its widest point. The candle has a level wax bottom, allowing it to rest on a flat surface.

NY C82941 describes Item # 18058, a natural pine cone candle. It is a candle molded into the shape of a pine cone. The candle measures approximately 5 inches in height and 3 3/4 inches at its widest portion. The pine cone is brown and appears to be dusted in white to simulate snow. The candle has a level wax bottom, allowing it to rest on a flat surface.

NY B83722 describes Item # 80093, Mr. and Mrs. Pilgrim Candle. These are a pair of three-dimensional molded candle figures. Mr. Pilgrim is in a pilgrim outfit with a large white collar and with a buckle on each shoe and on his black hat. He holds a pumpkin. Mrs. Pilgrim is dressed as a woman of the early 17th century with a full skirt and mobcap. She wears an apron and holds some food in a basket. The candle has a level wax bottom, allowing it to rest on a flat surface.

Each of the rulings listed above classified the described candles in heading 3406, HTSUS, the provision for "Candles, tapers and the like."

Issue:

Whether the candles are classifiable as candles or festive articles.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's may then be applied. The headings under consideration are as follows:

3406 [c]andles, tapers, and the like

9505 [f]estive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof.

In *Midwest of Cannon Falls, Inc. v. United States*, Court No. 92-03-00206, 1996 Ct. Int'l Trade LEXIS 15 (Ct. Int'l Trade, January 18, 1996), 122 F.3d 1423 (Fed Cir. 1997) (hereinafter *Midwest*), the Court addressed the scope of heading 9505, HTSUS, specifically, the class or kind "festive articles," and provided new guidelines for classification of articles in the heading. In general, merchandise is classifiable in heading 9505, HTSUS, as a festive article when the article, as a whole:

1. Is not predominately of precious or semiprecious stones, precious metal or

metal clad with precious metal;

2. Functions primarily as a decoration or functional item used in celebration of and for entertainment on a holiday; and

3. Is associated with or used on a particular holiday

Based on a review of the *Midwest* articles, Customs is of the opinion that the court has included within the scope of the class "festive articles," decorative household articles which are representations of an accepted symbol for a recognized holiday. See our Informed Compliance Publication, (ICP) "Classification of Festive Articles," 32 *Customs Bulletin* 2/3, dated January 21, 1998.

In addition to the above listed criteria, the Court gave consideration to the general criteria for classification set forth in *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), cert. denied, 429 U.S. 979 (hereinafter *Carborundum*). In the ICP Customs indicates that for those articles not specifically recognized in *Midwest* or listed in the ICP, Customs will consider the general criteria set forth in *Carborundum* to determine whether a particular article belongs to the class or kind "festive articles." Those criteria include: the general physical characteristics of the article, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use.

The subject candles have no precious or semi-precious stones, metals or metal clad with precious metal. Item # 19003CD, a three-dimensional representation of Santa Claus, item # 18059, a three-dimensional representation of a Christmas tree, and item # 80093, a three-dimensional representations of "Mr. and Mrs. Pilgrim", are articles (candles) which are representations of accepted symbols; Santa Claus and Christmas tree, for the recognized holiday of Christmas and Mr. and Mrs. Pilgrim for Thanksgiving. As such, they are described by heading 9505, HTSUS, and classifiable as festive articles.

While a pine cone, item # 18058, is not in and of itself a recognized symbol of any holiday, its association with accepted symbols here and the application of the *Carborundum* factors indicate that it is principally used as a festive article. The article appears to be sold for a limited amount of time, during the particular holiday's retail season and is used by the ultimate purchaser in the same manner as other festive articles.

The candles are described by both headings. *Midwest* addressed how to classify an article when it is described by both the festive heading and another one. In *Midwest*, a series of nutcrackers were determined to be described by both the festive articles heading (9505) and the doll heading (9502). The Court stated that "dolls" was an *eo nomine* provision and that "ornament" was a use provision. It then held that: "... a use heading is generally more specific than an *eo nomine* one." However, rather than adopting a rule for deciding between an *eo nomine* and a use provision under the HTSUS, the Court chose to determine that the heading 9505 classification was more specific based on "all the factors and circumstances." We have performed a similar analysis in this case. That is, we have compared the term "festive article" in heading 9505 to the term "candle" in heading 3406 and found, that for these particular candles, heading 9505 is more specific for tariff purposes. Included in this analysis is the finding that the candles under consideration here are principally decorative three-dimensional articles which would not be used principally to provide light, but rather to decorate a home for a particular holiday.

Finally, Note 1(a) to chapter 95 states, in pertinent part, that: "[t]his chapter does not cover: [c]hristmas tree candles (heading 3604)." This Note does not exclude the subject articles as they are not "Christmas tree candles."

See HQ 961873 dated January 29, 1999, for a similar ruling.

Holding:

Item #s 19003CD, 18059, and 18058 are classifiable in subheading 9505.10.25,

HTSUS, as a "[f]estive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: [c]hristmas ornaments: [o]ther."

Item # 80093 is classifiable in subheading 9505.90.60, HTSUS, the provision for "[f]estive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: [o]ther: [o]ther."

NY C82327, C82940, C82941 and B83722 are revoked in accordance with this ruling. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN EMPTY GLASS ENVELOPES (BULBS) FOR HALOGEN LAMPS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation and modification of tariff classification ruling letters and the revocation of treatment relating to the classification of empty glass envelopes (bulbs) for halogen lamps.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling, and is revoking any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of empty glass envelopes (bulbs) for halogen lamps under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocations and modifications were published on September 27, 2000, in Vol. 34, No. 39 of the *Customs Bulletin*. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 14, 2001.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich,
General Classification Branch: (202) 927-2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to revoke NY B88262, dated July 27, 1997, was published on September 27, 2000, in Vol. 34, No. 39 of the *Customs Bulletin*. No comments were received in response to this notice.

As stated in the proposed notice, this revocation action will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY B88262, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 964397 (see the Attachment to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty (60) days after its publication in the *Customs Bulletin*.

Dated: October 31, 2000

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

October 31, 2000
CLA-2 RR:CR:GC 964397 AML
Category: Classification
Tariff No.: 7011.10.10

Ms. LISA C. SCHNEIDER
ASSOCIATED CUSTOMHOUSE BROKERS, INC.
WATER TOWER PARK
1099 Jay Street Bldg. C-5
P.O. Box 22670
Rochester, NY 14692-2670

Re: Glass envelopes for halogen bulbs; NY B88262 revoked.

DEAR Ms. SCHNEIDER:

This is in reference to New York Ruling Letter (NY) B88262, dated July 31, 1997, issued to you on behalf of Bausch & Lomb, Inc., which concerned the classification of glass envelopes under the Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered NY B88262 and now believe that the classification set forth is incorrect. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published on September 27, 2000, in Vol. 34, No. 39 of the Customs Bulletin, proposing to revoke NY B88262 and to revoke the treatment pertaining to the coated and uncoated empty glass envelopes (bulbs) for halogen lamps. No comments were received in response to this notice.

Facts:

The articles were described in NY B88262 as coated and uncoated glass envelopes for halogen bulbs and were classified under subheading 7011.10.50, HTSUS, which provides for glass envelopes (including bulbs and tubes), open, and glass parts thereof, without fittings, for electric lamps, cathode-ray tubes or the like: for electric lighting: bulbs for incandescent lamps: other.

Issue:

Whether glass envelopes for use in halogen bulbs are classifiable in subheading 7011.10.10 or 7011.10.50, HTSUS?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS headings and subheadings under consideration are as follows:

- 7011 Glass envelopes (including bulbs and tubes), open, and glass parts thereof, without fittings, for electric lamps, cathode-ray tubes or the like:
- 7011.10 For electric lighting:
- 7011.10.10 Bulbs for incandescent lamps:
- 7011.10.50 Other.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

There is no dispute that the articles are classifiable in heading 7011. We note, for informational purposes, that if the glass envelopes were imported with their fittings in place, i.e., as finished or complete halogen bulbs, they would be classifiable as such in heading 8359, HTSUS. See, for example, Headquarters Ruling Letter (HQ) 962258, dated February 11, 1999. The crux of the matter is which subheading best describes the glass envelopes to be used for halogen bulbs. The ENs to heading 7011, HTSUS, provide, in pertinent part, as follows:

This heading covers:

(A) All open glass envelopes (including bulbs and tubes) of any shape or size, without fittings, for the manufacture of electric lamps, valves and tubes, whether these are for illuminating or other purposes (incandescent or vapour discharge lamps, X-ray tubes, radio valves, cathode-ray tubes, rectifier valves or other electronic tubes or valves, infra-red lamps, etc.). Most of these envelopes are mass-produced by automatic machines; they may be frosted, coloured, opal, metallised, coated with fluorescent material, etc.

Glass parts of envelopes (such as faceplates or cones of cathode-ray tubes for television receivers, spotlight bulb reflectors) remain in this heading.

(B) Tubes with narrowed ends clearly intended for electric lamps, or bent into shape for advertising signs.

(C) Tubes lined with a fluorescent substance (e.g., zinc silicate, cadmium borate, calcium tungstate).

By means of a series of operations (including, insertion of filaments or electrodes, exhaustion of the envelope, introduction of one or more rare gases, of mercury, etc., fitting of caps or connectors), these envelopes are made into electric lamps, cathode-ray tubes or the like of Chapter 85.

All the above-mentioned articles may be of ordinary glass, crystal glass or fused quartz.

The *Encyclopedia Britannica* (1993), under the heading "lamps" provides the following definitions and explanations of electric lamps and discharge lamps while tracing the developmental history of those articles:

An incandescent lamp (*q.v.*) is one in which a filament gives off light when heated to incandescence by an electric current.

The most important subsequent improvement in the incandescent lamp was the development of metallic filaments, particularly of tungsten. Tungsten filaments quickly replaced ones made of carbon, tantalum, and metalized carbon in the early 1900s[.] Tungsten is highly suitable for such lamps because of all the materials suitable for drawing into filament wires, it has the highest melting point. This means that lamps can operate at higher temperatures and therefore emit both whiter light and more light for the same electrical input than was possible with less durable and less refractory carbon filaments.

The early tungsten lamps, like carbon lamps, suffered from the migration of filament molecules to the glass bulb, causing a blackening of the bulb, a loss in light output, and progressive thinning of the filament until it broke. About 1913, it was found that a small amount of inert gas (argon or nitrogen) reduced migration and enabled the filament to be run at a higher temperature, giving a whiter light, higher efficiency, and longer life. Further improvements followed including the development of the coiled filament.

The *Encyclopedia Americana* (1993) provides similar definitional explanations under the heading "electric lighting" at pp. 127-128; as does the *McGraw-Hill Scientific and Technical Encyclopedia* under the heading "incandescent lamp," with the functional differences being noted under the headings "fluorescent lamp," "metal halide lamp," "neon glow lamp," and "vapor lamp." For further insight see also the *Electrical Engineering Handbook*, CRC Press, Inc., 1993, pp. 2257-2276.

The *McGraw-Hill Scientific and Technical Encyclopedia* under the heading "incandescent lamp" elaborates, under the subheading "tungsten-halogen":

These special lamps are made with a fill gas that includes a small amount of one of the halogen elements such as iodine, bromine, or chlorine. The special changes that result from the halogen addition are: (1) the filament temperature can be increased, giving a whiter light output; (2) the depreciation in light output with time is greatly decreased; and (3) the lumen output and the life are increased. The lamps are made only in the tubular shape by using small-diameter tubing made of fused quartz instead of glass to withstand the 500°F or 260°C bulb wall temperature required for proper functioning of the halogen gas fill. In operation, as the tungsten evaporates from the filament, it combines with the halogen forming a tungsten-halogen gas. This gas circulates within the lamp, but instead of blackening the bulb wall with tungsten deposits, as happens in regular lamps, the tungsten remains as a gas, until coming in contact with the very high-temperature filament it separates into halogen and tungsten with the tungsten being deposited back on the filament. This lamp develops a larger amount of ultraviolet radiation than general-service lamps. This may cause problems when lighting objects sensitive to ultraviolet, so precautions may be required.

Under the subheading "lamp construction," again under the heading "luminescent lamps," *McGraw-Hill* provides:

The important parts of an incandescent lamp are the lamp enclosure or bulb, the filament, and the base. Standard lamps have various bulb shapes, bases, and filament constructions. The bulb may be clear, colored, inside-frosted, or coated with diffusing or reflecting material. Most lamps have soft-glass bulbs; hard glass is used when the lamp will be subjected to sudden and severe temperature changes. In addition, lamps are available with a variety of bulb

shapes, base types, and filament structures. These vary according to the type of service planned, the need for easy replacement, and other environmental and service conditions.

We find that halogen lamps are incandescent lamps and that the glass envelopes without fittings are designed and intended principally and solely for such use.

Holding:

The empty glass envelopes are classifiable under subheading 7011.10.10, HTSUS, which provides for glass envelopes (including bulbs and tubes), open, and glass parts thereof, without fittings, for electric lamps, cathode-ray tubes or the like: for electric lighting: bulbs for incandescent lamps.

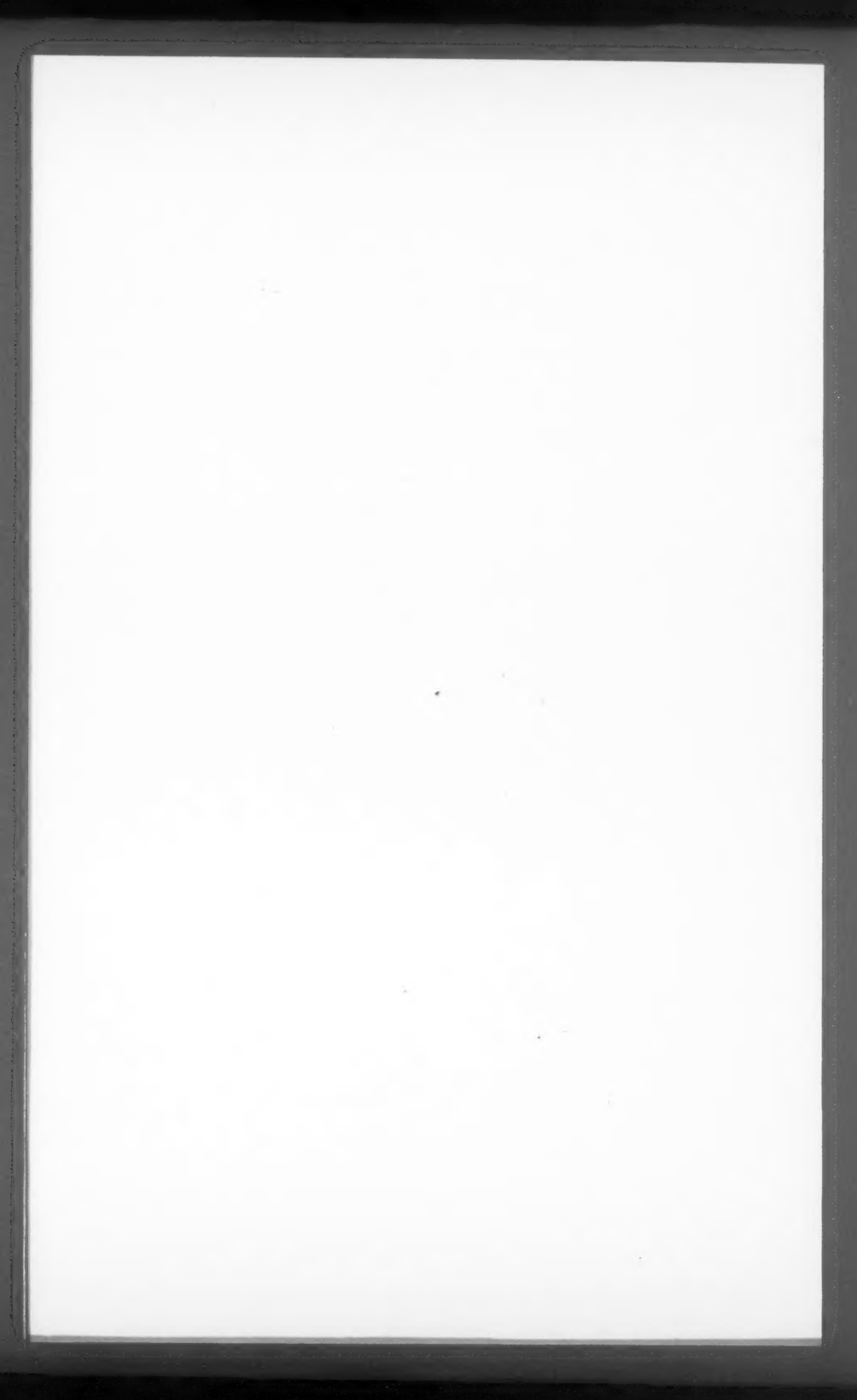
For informational purposes, we note that this ruling is limited to glass envelopes which are not finished. Finished bulbs (those which are imported with either a filament and/or the metallic base) are classifiable *eo nomine* under heading 8539, HTSUS, which provides for electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; arc lamps and parts thereof.

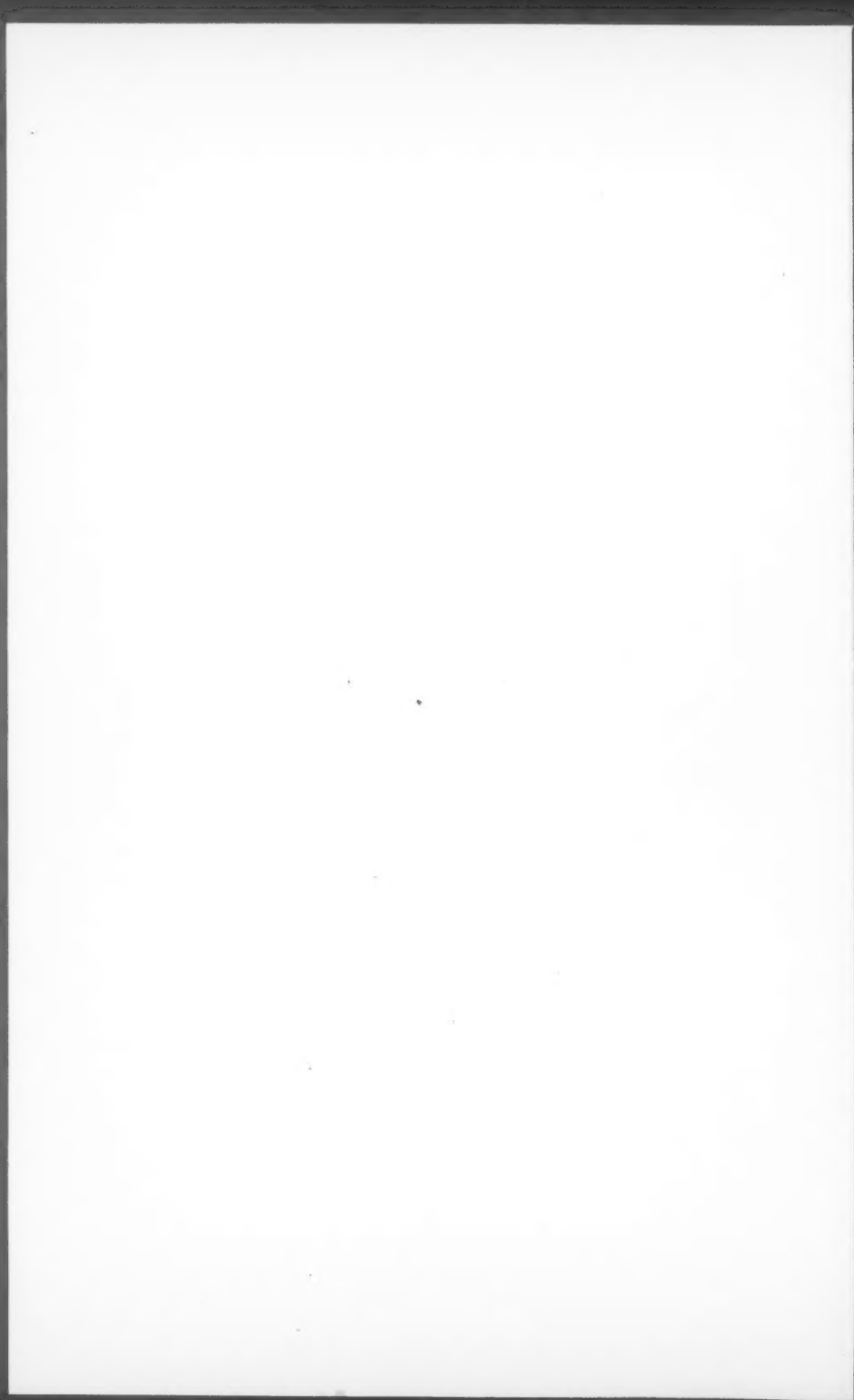
Effect on Other Rulings:

NY B88262 is hereby REVOKED. In accordance with 19 U.S.C. §1625 (c), this ruling will become effective sixty (60) days after its publication in the Customs Bulletin.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

cc: National Commodity Specialist Division
NIS Jacob Bunin





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Customs Bulletin and Decisions
Vol. 34, No. 46, November 15, 2000

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